रजिस्ट्री सं० डी० एल० (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 42] नई दिल्ली, अक्तूबर 10—अक्तूबर 16, 2010, शनिवार/आश्विन 18—आश्विन 24, 1932
No. 42] NEW DELHI, OCTOBER 10—OCTOBER 16, 2010, SATURDAY/ASVINA 18—ASVINA 24, 1932

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 1 अक्तूबर, 2010

का.आ. 2539.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 21क के साथ पठित धारा 21 की उप-धारा (1) के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करके, एतद्द्वारा, डॉ. (सुश्री) पुष्पा ताराचन्द, (जन्म तिथि 28-08-1955) निवासी 15/1, सिविल लाइन्स, कानपुर-208001 को उनकी नियुक्ति की अधिसूचना की तिथि से तीन वर्षों की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय स्टेट बैंक के लखनऊ क्षेत्र के स्थानीय निदेशक मंडल में अंशकालिक गैर-सरकारी निदेशक के रूप में नामित करती है ।

[फा. सं. 8/14/2009-बीओ-I]

सुमिता डावरा, निदेशक

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 1st October, 2010

S.O. 2539.—In exercise of the powers conferred by clause (c) of sub-section (1) of Section 21, read with section 21A of The State Bank of India Act, 1955 (23 of 1955), the Central Government, in consultation with Reserve Bank of India, hereby nominates Dr. (Ms.) Pushpa Tarachand (DoB: 28-08-1955), resident of 15/1, Civil Lines, Kanpur-208001, as part-time non-official director on the Local Board of State Bank of India at Lucknow Region, for a period of three years from the date of notificaton of her appointment or until further orders, whichever is earlier.

[F.No. 8/14/2009-BO.I]

SUMITA DAWRA, Director

नई दिल्ली, 1 अक्तूबर, 2010

का.आ. 2540.—भारतीय स्टेट बैंक (अनुषंगी बैंक) अधिनियम, 1959 (1959 का 38) की धारा 26 की उपधारा (2क) के

साथ पठित धारा 25 की उपधारा (1) के खण्ड (गख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा, भारतीय रिजर्व बैंक के परामर्श से, श्री सी. राजकुमार, (जन्म तिथि-31-07-1961), मुख्य प्रबंधक, आंचलिक कार्यालय, त्रिवेन्द्रम को अधिसूचना की तिथि से तीन वर्षों की अवधि के लिए अथवा स्टेट बैंक ऑफ त्रावणकोर के अधिकारी कर्मचारी बने रहने तक अथवा अगले आदेशों तक, इनमें से जो भी सबसे पहले हो, स्टेट बैंक आफ त्रावणकोर के निदेशक मंडल में अधिकारी कर्मचारी निदेशक के रूप में नामित करती है ।

[फा.सं. 6/6/2010-बीओ-I]

सुमिता डावरा, निदेशक

New Delhi, the 1st October, 2010

S.O. 2540.—In exercise of the powers conferred by clause (cb) of sub-section (1) of Section 25 read with sub-section (2A) of Section 26 of The State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), the Central Government, after consultation with the Reserve Bank of India, hereby nominates Shri C Rajkumar (DoB: 31-07-1961), Chief Manager, Zonal Office, Trivandrum, as Officer Employee Director on the Board of Directors of State Bank of Travancore for a period of three years from the date of notification or until he ceases to be an officer of the State Bank of Travancore or until further orders, whichever is the earliest.

[F.No. 6/6/2010-BO.I]

SUMITA DAWRA, Director

नई दिल्ली, 4 अक्तूबर, 2010

का.आ. 2541.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्द्वारा, यह घोषणा करती है कि बैंककारी विनियमन अधिनियम, 1949 की धारा 19 (2) के उपबंध 6 सितम्बर, 2011 तक एलाहाबाद आईडीबीआई लि. अथवा आईडीबीआई बैंक लि., जैसा भी मामला हो, पर लागू नहीं होंगे ।

[फा. सं. 7/72/2008-बीओए]

एम. एम. डावरा, अवर सचिव

New Delhi, the 4th October, 2010

S.O. 2541.—In exercise of the powers conferred by Sub-section (1) of Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendation of Reserve Bank of India, hereby declares that the provisions of section 19 (2) of the Banking Regulation Act, 1949 shall not apply to the erstwhile IDBI Ltd. or the IDBI Bank Ltd., as the case may be, till September 30, 2011.

[F.No. 7/72/2008-BOA]

M. M DAWLA, Under Secy.

नई दिल्ली, 6 अक्तूबर, 2010

का.आ. 2542.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उपखंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3(ज) और (3क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा, श्री श्रेन्नक सेट्ट (जन्म तिथि 21-08-1949)को अधिसूचना की तिथि से तीन वर्षों की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, युनाइटेड बैंक ऑफ इंडिया के निदेशक मंडल में अंशकालिक गैर-सरकारी निदेशक के रूप में नामित करती है ।

[फा.सं.9/1/2006-बीओ-I]

सुरिन्दर कौर, अवर सचिव

New Delhi, the 6th October, 2010

S.O. 2542.—In exercise of the powers conferred by of sub-section 3(h) and (3-A) of Section 9 of The Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of the Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby nominates Shri Srenik Sett (DoB: 21-08-1949) as part-time non-official director on the Board of Directors of United Bank of India for a period of three years from the date of notification or until further orders, whichever is ealier.

[F.No. 9/1/2006-BO.I]

SURINDER KAUR, Under Secy.

नई दिल्ली, 6 अक्तूबर, 2010

का.आ. 2543.—जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री संजय जैन को अधिसूचना की जारीख से तीन वर्षों की अवधि के लिए अथवा अगले ओदशों तक, जो भी पहले हो, भारतीय जीवन बीमा निगम के निदेशक मण्डल में गैर-सरकारी सदस्य के रूप में नियुक्त करती है ।

[फा.सं. ए-15011/1/2007-बीमा III]

हरदीप एस. सैनी, अवर सचिव

New Delhi, the 6th October, 2010

S.O. 2543.—In exercise of the powers conferred by Section 4 of the Life Insurance Corporation Act, 1956 (31

of 1956), the Central Government hereby appoints Shri Sanjay Jain as Non-Official Member on the Board of the Life Insurance Corporation of India for a period of three years from the date of Notification or until further orders, whichever is earlier.

[F. No. A-15011/1/2007-Ins.-III]

HARDEEP S. SAINI, Under Secy.

नई दिल्ली, 13 अक्तूबर, 2010

का.आ. 2544.—भारतीय जीवन बीमा निगम श्रेणी-III और श्रेणी-IV कर्मचारी (सेवा के निबंधन और शर्तों का संशोधन) नियमावली, 1985 के नियम 13 के उप नियम (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा यह निर्धारित करती है कि श्रेणी-III और श्रेणी-IV के प्रत्येक कर्मचारी को 1 अप्रैल, 2009 को आरम्भ होने वाली और 31 मार्च, 2010 को समाप्त होने वाली अवधि के लिए बोनस के बदले में भुगतान, उक्त उप-नियम के अन्य उपबंधों के अध्यधीन, उनके वेतन के 15 प्रतिशत की दर पर किया जाएगा ।

[फा. सं. 2(15)/96/बीमा-III]

हरदीप एस. सैनी, अवर सचिव

New Delhi, the 13th October, 2010

S.O. 2544.— In exercise of the powers conferred by sub-rule (2) of rule 13 of the Life Insurance Corporation of India Class III and Class IV Employees (Revision of Terms and Conditions of Service) Rules,1985, the Central Government hereby determine that, subject to the other provisions of the said sub-rule, the payment in lieu of bonus for the period commencing on 1st day of April, 2009 and ending with 31s. March, 2010 to every Class III and Class IV employee shall be at the rate of 15 per cent of his/her salary.

[F. No. 2(15)96/Ins.-III]

HARDEEP S. SAINI, Under Secy.

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

(स्वास्थ्य एवं परिवार कल्याण विभाग)

नई दिल्ली, 4 जून, 2010

का.आ. 2545.—भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों को प्रयोग करते हुए केन्द्र सरकार, भारतीय चिकित्सा परिषद् से परामर्श करके, संबद्ध विश्वविद्यालय के नाम में परिवर्तन के कारण उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है, नामत:

उक्त प्रथम अनुसूची में मान्यताप्राप्त चिकित्सा अर्हता शीर्षक [इसके बाद कालम (2) के रूप में निर्दिष्ट] के अन्तर्गत "भारती विद्यापीठ आयुर्विज्ञान संस्थान (मानद विश्वविद्यालय), पुणे" के प्रति पंजीकरण के लिए संक्षिप्त रूप [इसके बाद कालम (3) के रूप में निर्दिष्ट] शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित को अंतर्विष्ट किया जाएगा, नामत:

मान्यताप्राप्त चिकित्सा अर्हता	पंजीकरण के लिए संक्षिप्त रूप
(2)	(3)
बैचलर ऑफ मेडिसिन एंड बैचलर ऑफ सर्जरी	एमबीबीएस
	भारती विद्यापीठ मानद विश्वविद्यालय मेडिकल कालेज एवं अस्पताल, सांगली, महाराष्ट्र में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में भारती विद्यापीठ आयुर्विज्ञान संस्थान (मानद विश्वविद्यालय), पुणे, महाराष्ट्र द्वारा जनवरी, 2010 के बाद प्रदान की गई चिकित्सा अर्हता मान्यताप्राप्त मानी जाएगी ।

[फा.सं. यू-12012/56/2004-एमई(पी.II)]

अनिता त्रिपाठी, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 4th June, 2010

S.O. 2545.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said First Schedule against "Bharati Vidyapeeth Institute of Medical Sciences (Deemed University), Pune" under the heading 'Recognized Medical Qualification'[in column (2)] and under the heading 'Abbreviation for Registration' [in column (3)], the following shall be inserted, namely :

Recognized Medical Qualification	Abbreviation for Registration
(2)	(3)
Bachelor of Medicine and Bachelor of Surgery	M.B.B.S.
	(This shall be a recognized medical qualification when granted after January 2010 by

(2)	(3)
Institute of (Deemed Pune, Maharashtra of being Vidyapeeth Medical Hospital, Sangali, Maharashtra.)	Bharati Vidyapeeth Medical Sciences University), in respect of students trained at Bharati Deemed University College &

[F.No. U-12012/56/2004-ME(P-II)]

ANITA TRIPATHI, Under Secy.

नई दिल्ली, 9 सितम्बर, 2010

का.आ. 2546.—केन्द्रीय सरकार, दंत चिकित्सा अधिनियम, 1948 (1948 का 16) की धारा (10) की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय दंत-चिकित्सा परिषद् के परामर्श से उक्त अधिनियम की अनुसूची के भाग-I में निम्नलिखित संशोधन करती है, नामत:

2. देवी अहिल्या विश्वविद्यालय, इन्दौर द्वारा प्रदान की जाने वाली दंत-चिकित्सा डिग्रियों को मान्यता प्रदान करने के संबंध में दंत-चिकित्सा अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग -I में क्रम संख्या 26 के सामने दिए गए कॉलम 2 और 3 की मौजूदा प्रविष्टियों में इसके पश्चात् निम्नलिखित प्रविष्टियाँ अंतर्विष्ट की जाएंगी :-

"II मॉडर्न दंत-चिकित्सा महाविद्यालय, इंदौर"

दंत शल्यचिकित्सा में स्नातकोत्तर

(vii) ओरल पैथोलॉजी (यदि दिनांक 25-8-2009 को अथवा उसके पश्चात् प्रदान की जाती है) ।	एम डी एस (ओरल पैथोलॉजी), देवी अहिल्या विश्वविद्यालय, इंदौर ।

[सं.वी-12017/13/2005-डी ई(खण्ड-I)]

अनीता त्रिपाठी, अवर सचिव

New Delhi, the 9th September, 2010

S.O. 2546.—In exercise of the powers conferred by sub-section (2) of the Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby, makes the following amendments in Part-I of the Schedule to the said Act, namely :—

2. In the existing entires of column 2 & 3 against Serial No. 26, in part-I of the Schedule to the Dentists Act, 1948 (16 of 1948) pertaining to recognition of dental degrees awarded by Devi Ahiliya Vishwavidyalaya, Indore, the following entries shall be inserted thereunder :—

"II Modern Dental College, Indore

Master of Dental Surgery

(vii) Oral Pathology (if granted on or after 25-8-2009)	MDS (Oral Pathology) Devi Ahiliya Vishwavidyalaya Indore

[No. V-12017/13/2005-DE(Part-I)]

ANITA TRIPATHI, Under Secy.

नई दिल्ली, 9 सितम्बर, 2010

का.आ. 2547.—केन्द्रीय सरकार, दंत चिकित्सा अधिनियम, 1948 (1948 का 16) की धारा (10) की उप- धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय दंत-चिकित्सा परिषद् के परामर्श से उक्त अधिनियम की अनुसूची के भाग-I में निम्नलिखित संशोधन करती है, नामत:

2. भारथ विश्वविद्यालय द्वारा प्रदान की जाने वाली दंत-चिकित्सा डिग्रियों को मान्यता प्रदान करने के संबंध में दंत-चिकित्सा अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-I में क्रम संख्या 64 के सामने दिए गए कॉलम 2 और 3 की मौजूदा प्रविष्टियों में इसके पश्चात् निम्नलिखित प्रविष्टियाँ अंतर्विष्ट की जाएंगी :

"I श्री बालाजी दंत-चिकित्सा महाविद्यालय तथा अस्पताल चेन्नई"

दंत शल्यचिकित्सा में स्नातकोत्तर

(vi) पीरियोडोन्टिक्स (यदि दिनांक 30-3-2010 को या उसके बाद प्रदान की जाती है) ।	एम डी एस (पीरियोडोन्टिक्स), भारथ विश्वविद्यालय,
(vii) ओरल मेडिसिन तथा रेडियोलॉजी (यदि दिनांक 30-3-2010 को अथवा उसके बाद प्रदान की जाती है) ।	एमडीएस (ओरल मेडिसिन तथा रेडियोलॉजी), भारथ विश्वविद्यालय

[सं. वी-12017/44/2006 डीई]

अनीता त्रिपाठी, अवर सचिव

New Delhi, the 9th September, 2010

S.O. 2547.—In exercise of the powers conferred by sub-section (2) of the Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby, makes the following amendments in Part-I of the Schedule to the said Act, namely :-

2. In the existing entries of column 2 & 3 against Serial No. 64, in part-I of the Schedule to the Dentists Act,

1948 (16 of 1948) pertaining to recognition of dental degrees awarded by Bharath University, the following entries shall be inserted thereunder:-

"I Shree Balaji Dental College & Hospital, Chennai

Master of Dental Surgery

(vi) Periodontics (if granted on or after 30-3-2010)	MDS (Periodontics), Bharath University
(vii) Oral Medicine and Radiology (if granted on or after 30-3-2010)	MDS (Oral Medicine & Radiology), Bharath University,"

[No. V-12017/44/2006-DE]

ANITA TRIPATHI, Under Secy.

नई दिल्ली, 16 सितम्बर, 2010

का.आ. 2548.—भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों को प्रयोग करते हुए केन्द्र सरकार, भारतीय चिकित्सा परिषद् से परामर्श करके, अर्हता नामावली में परिवर्तन के कारण उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है नामत:

उक्त अनुसूची में-

(क) मान्यताप्राप्त चिकित्सा अर्हता शीर्षक (इसके बाद कॉलम (2) के रूप में निर्दिष्ट) के अंतर्गत "दिल्ली विश्वविद्यालय" के प्रति पंजीकरण के लिए संक्षिप्त रूप (इसके बाद कॉलम (3) के रूप में निर्दिष्ट) शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित को अंतर्विष्ट किया जाएगा:-

(2)	(3)
"डाक्टर ऑफ मेडिसिन (फार्माकोलॉजी)"	एम डी ((फार्माकोलॉजी) (यह एक मान्यताप्राप्त चिकित्सकीय अर्हता होगी, जब दिल्ली विश्वविद्यालय द्वारा इसे वी.पी.चेस्ट इंस्टीच्यूट, दिल्ली में 1988 में अथवा इसके पश्चात् प्रशिक्षित विद्यार्थियों को स्वीकृत की जाएगी)।

(ख) "मान्यताप्राप्त चिकित्सा अर्हता" शीर्षक (इसके बाद कॉलम(2) के रूप में निर्दिष्ट) के अन्तर्गत "बंगलौर विश्वविद्यालय" के प्रति पंजीकरण के लिए संक्षिप्त रूप (इसके बाद कॉलम (3) के रूप में निर्दिष्ट) शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित को अंतर्विष्ट किया जाएगा, नामत:-

(2)	(3)
"मेडिकल रेडियों थिरैपी में डिप्लोमा"	डी एम आर टी (यह एक मान्यताप्राप्त चिकित्सीय अर्हता जब इसे बंगलौर विश्वविद्यालय द्वारा किदवई मेमोरियल इंस्टिच्यूट ऑफ आनकोलोजी, बंगलौर में 1989 में अथवा इसके पश्चात् प्रशिक्षित विद्यार्थियों को स्वीकृत की जाएगी)।

(ग) "मान्यताप्राप्त चिकित्सा अर्हता" शीर्षक (इसके बाद कॉलम(2) के रूप में निर्दिष्ट) के अन्तर्गत "राजीव गांधी चिकित्सा विज्ञान विश्वविद्यालय, बंगलौर" के प्रति पंजीकरण के लिए संक्षिप्त रूप (इसके बाद कॉलम (3) के रूप में निर्दिष्ट) शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित को अंतर्विष्ट किया जाएगा, नामत:-

(2)	(3)
"मेडिकल रेडियों थिरैपी में डिप्लोमा"	डी एम आर टी (यह एक मान्यताप्राप्त चिकित्सीय अर्हता जब इसे राजीव गांधी चिकित्सा विज्ञान विश्वविद्यालय, बंगलौर द्वारा किदवई मेमोरियल इंस्टिच्यूट ऑफ आनकोलोजी, बंगलौर में 1989 में अथवा इसके पश्चात् प्रशिक्षित विद्यार्थियों को स्वीकृत की जाएगी)।

सभी के लिए टिप्पणी :- 1. किसी स्नातकोत्तर पाठयक्रम के लिए स्वीकृत मान्यता 5 वर्ष की अधिकतम अवधि के लिए होगी, जिसके बाद इसकी पुनरीक्षा की जाएगी ।

2. उपधारा-4 में अपेक्षित अनुसार मान्यता के समय पर नवीकरण नहीं कराने के फलस्वरूप संबंधित स्नातकोत्तर पाठयक्रम में निरपवाद रूप से दाखिला बंद हो जाएगा ।

[संख्या यू. 12012/170/2010-एम ई(पी-II)]

अनिता त्रिपाठी, अवर सचिव

New Delhi, the 16th September, 2010

S.O. 2548.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, due to change of nomenclature of the qualification namely :—

In the said Schedule -

(a) against "University of Delhi" under the heading 'Recognised Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—

(2)	(3)
"Doctor of Medicine (Pharmacology)"	MD (Pharmacology) (This shall be a recognised medical qualification when granted by University of Delhi in respect of students being trained at V.P. Chest Institute, University of Delhi, Delhi on or after 1988).

(b) against "Bangalore University" under the heading 'Recognised Medical Qualification' [hereinafter referred to as columan (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :-

(2)	(3)
"Diploma in Medical Radio Therapy"	DMRT (This shall be a recognised medical qualification when granted by Bangalore University in respect of students being trained at Kidwai Memorial Institute of Oncology, Bangalore on or after 1989).

(c) against "Rajiv Gandhi University of Health Sciences, Bangalore" under the heading 'Recognised Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—

(2)	(3)
"Diploma in Medical Radio Therapy"	DMRT (This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore in respect of students being trained at Kidwai Memorial Institute of Oncology, Bangalore on or after 1989).

Note to all:

1. The recognition so granted to a Postgraduate Course shall be for a maximum period of 5 years, upon which it shall have to be renewed
2. Failure to seek timely renewal of recognition as required in sub-clause 4 shall invariably result in stoppage of admissions to the concerned Postgraduate Course.

[No. U.-12012/170/2010-ME (P.II)]

ANITA TRIPATHI, Under Secy

सूक्ष्म, लघु और मध्यम उद्यम मंत्रालय

नई दिल्ली, 30 सितम्बर, 2010

का.आ. 2549.—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में सूक्ष्म, लघु और मध्यम उद्यम मंत्रालय के नियंत्रणाधीन निम्नलिखित कार्यालयों जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्द्वारा अधिसूचित करती है:

1. राज्य कार्यालय, खादी और ग्रामोद्योग आयोग, अंबाला छावनी ।
2. उप कार्यालय खादी और ग्रामोद्योग आयोग एवं बहुउद्योग प्रशिक्षण केन्द्र, हल्द्वानी जिला -नैनीताल ।
3. केन्द्रीय पूनी संयंत्र, खादी और ग्रामोद्योग आयोग-एटा (उ.प्र.) ।
4. चौधरी चरण सिंह बहु उद्योगीय प्रशिक्षण केन्द्र, पंजाखुरा, जिला मुजफ्फनगर (उ.प्र.) ।

[सं. -ई-12016/01/2005-हिन्दी]

अमरेन्द्र सिन्हा, संयुक्त सचिव

MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES

New Delhi, the 30th September, 2010

S.O. 2549.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following office, under the control of the Ministry of Micro, Small & Medium Enterprises, whose more than 80% staff has acquired working knowledge in Hindi:

1. State Office, Khadi and Village Industries Commission, Ambala Cantt. (Haryana).
2. Sub-Office, Khadi and Village Industries Commission and Multi Disciplinary Training Center, Haldwani District- Nainital (Uttarakhand).
3. Central Sliver Plant, Khadi and Village Industries Commission, Etah (Uttar Pradesh).
4. Choudhary Charan Singh Multi Disciplinary Training Center, Panjhokhra, Muzaffar Nagar (Uttar Pradesh).

[No. E-12016/01/2005-Hindi]

AMARENDRA SINHA, Jt. Secy.

विदेश मंत्रालय

(सीपीवी प्रभाग)

नई दिल्ली, 5 अक्तूबर, 2010

का.आ. 2550.—राजनयिक और कोंसलीय ऑफिसर (शपथ और फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में, केंद्र सरकार एतद्द्वारा श्री वी.रामाकृष्णन, सहायक और श्री एम. गणेश, निम्न श्रेणी लिपिक को 5-10-2010 से भारत के कौसलावास, दुबई में सहायक कोंसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है ।

[सं.टी. 4330/1/2006]

आर.के. पेरिनडिया, अवर सचिव (कोंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(C.P.V. Division)

New Delhi, the 5th October, 2010

S.O. 2550.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorise Shri V. Ramakrishnan, Assistant and Shri M. Ganesh, LDC in the Consulate General of India, Dubai to perform their duties of Assistant Consular Officers with effect from 5th October, 2010.

[No. T. 4330/01/2006]

R.K. PERINDIA, Under Secy. (Consular)

नई दिल्ली, 6 अक्तूबर, 2010

का.आ. 2551.—राजनयिक और कोंसलीय ऑफिसर (शपथ और फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में, केंद्र सरकार एतद्द्वारा श्री हेम नारायण सिंह, सहायक को 6-10-2010 से भारत के राजदूतावास, बहरीन में सहायक कोंसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है ।

[सं.टी. 4330/1/2006]

आर. के. पेरिनडिया, अवर सचिव (कोंसुलर)

New Delhi, the 6th October, 2010

S.O. 2551.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorise Shri Hem Narayan Singh, Assistant in the Embassy of India, Bahrain to perform the duties of Assistant Consular Officer with effect from 6th October, 2010.

[No. T. 4330/01/2006]

R.K. PERINDIA, Under Secy. (Consular)

विद्युत मंत्रालय

नई दिल्ली, 29 सितम्बर, 2010

का.आ. 2552.—सार्वजनिक स्थल (अनधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा भारत सरकार विद्युत मंत्रालय के दिनांक 12 सितम्बर, 2001 के सं. का. आ. 2649 की अधिसूचना के अधिक्रमण में, केंद्र सरकार एतद्द्वारा निम्नलिखित तालिका के कॉलम सं. (1) में उल्लिखित अधिकारियों को, उक्त अधिनियम के प्रयोजन के लिए सरकार के राजपत्रित अधिकारी के समतुल्य पद पर संपदा अधिकारी नियुक्त करती है, जो उक्त तालिका के कॉलम संख्या (2) में विनिर्दिष्ट सार्वजनिक परिसरों से संबंधित अपने अधिकार-क्षेत्र की सीमाओं के भीतर उक्त अधिनियम के द्वारा अथवा इसके अंतर्गत संपदा अधिकारी को दी गई शक्तियों का प्रयोग करेंगे तथा सौंपी गई डयूटी का निर्वहन करेंगे, अर्थात् :-

तालिका

क्र.सं.	अधिकारी का नाम और पदनाम	सार्वजनिक परिसरों की श्रेणियां तथा अधिकार क्षेत्र की स्थानीय सीमा
1	2	3
1.	श्री अनिरूद्ध सिंह, उप प्रबंधक (मानव संसाधन), नेशनल थर्मल पावर कारपोरेशन	नेशनल थर्मल पावर कारपोरेशन लिमिटेड (एनटीपीसी लिमिटेड), टांडा ताप विद्युत केंद्र, डाकघर-विद्युत नगर जिला अंबेडकर नगर,

1	2	3
	लिमिटेड (एनटीपीसी लिमिटेड), टांडा थर्मल पावर स्टेशन, उत्तर प्रदेश ।	उत्तर प्रदेश के स्वामित्व अथवा पट्टे वाले तथा किराये पर दिए गए सभी स्थल, क्वार्टर, संपदा, संपत्तियां तथा अन्य स्थान ।
2.	श्री एम.चन्द्र सेगर, प्रबंधक (खनन), नेशनल थर्मल पावर कारपोरेशन लिमिटेड (एनटीपीसी लिमिटेड) केरनदारी कोयला खनन परियोजना, उत्तर करणपुरा कोलफील्ड्स, जिला हजारीबाग, झारखंड ।	नेशनल थर्मल पावर कारपोरेशन लिमिटेड (एनटीपीसी लि.), केरनदारी कोयला खनन परियोजना, उज्जवल कॉम्प्लेक्स, कल्लू चौक, विशाल मेगा मार्ट के ऊपर हजारीबाग-825301, झारखंड के स्वामित्व वाले अथवा पट्टे वाले तथा किराये पर दिए गए सभी स्थल, क्वार्टर संपदा, संपत्तियां एवं अन्य स्थान ।
3.	श्री बिनय कुमार प्रबंधक (खनन), नेशनल थर्मल पावर कारपोरेशन लिमिटेड (एनटीपीसी लिमिटेड) चट्टी बरियातू कोयला खनन परियोजना, उत्तर करणपुरा कोलफील्ड्स, जिला: हजारीबाग, झारखंड ।	नेशनल थर्मल पावर कारपोरेशन लिमिटेड (एनटीपीसी लिमिटेड), चट्टी बरियातू कोयला खनन परियोजना, उज्जवल काम्प्लेक्स, कल्लू चौक, विशाल मेगा मार्ट के ऊपर, हजारी बाग-825301, झारखंड के स्वामित्व वाले अथवा पट्टे वाले तथा किराये पर दिए गए सभी स्थल, क्वार्टर, संपदा, संपत्तियां एवं अन्य स्थान ।

[फा. सं. 8/6/1992-थर्मल-I(पार्ट-VII)]

आई.सी.पी.केशरी, संयुक्त सचिव

MINISTRY OF POWER

New Delhi, the 29th September, 2010

S.O. 2552.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (40 of 1971), and in suppression of the notification of the Government of India, Ministry of Power number S.O. 2649, dated the 12th September, 2001, the Central Government hereby appoints the officers mentioned in column (1) of the Table below, being officers, equivalent to the rank of gazetted officer of the Government to be estate officers for the purposes of the said Act, who shall exercise the powers conferred and perform the duties imposed on the estate officer by or under the said Act, within the limits of their jurisdiction in respect of the public premises specified in column (2) of the said Table, namely :—

TABLE

Sl. No.	Name and designation of officer	Categories of public premises and local limits of jurisdiction
	(1)	(2)
1.	Shri Anirudh Singh, Deputy Manager (Human Resources), National Thermal Power Corporation Limited (NTPC Limited), Tanda Thermal Power Station, Uttar Pradesh.	All lands, quarters, estate properties and other accommodations owned or leased and rented by National Thermal Power Corporation Limited (NTPC Limited), Tanda Thermal Power Station, P.O. Vidyut Nagar, District-Ambedkar Nagar, Uttar Pradesh.
2.	Shri M. Chandra Segar, Manager (Mining), National Thermal Power Corporation Limited (NTPC Limited), Kerandari Coal Mining Project, North Karanpura Coalfields, District: Hazaribagh, Jharkhand.	All lands, quarters, estates, properties and other accommodations owned or leased and rented by National Thermal Power Corporation Limited (NTPC Limited), Kerandari Coal Mining Project, Ujjawal Complex, Kallu Chowk, above Vishal Mega Mart, Hazaribagh - 825301, Jharkhand.
3.	Shri Binay Kumar, Manager (Mining), National Thermal Power Corporation Limited (NTPC Limited), Chatti-Bariatu Coal Mining Project, North Karanpura Coalfields, District: Hazaribagh, Jharkhand.	All lands, quarters, estates, properties and other accommodations owned or leased and rented by National Thermal Power Corporation Limited (NTPC Limited), Chatti-Bariatu Coal Mining Project, Ujjawal Complex, Kallu Chowk, above Vishal Mega Mart, Hazaribagh-825301, Jharkhand

[F. No. 8/6/1992-THL(Part-VII)]

C. P. KESHARI, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 23 सितम्बर, 2010

का.आ. 2553.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम (4) के उपविनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेन्सो के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिये गए हैं:-

अनुसूची

क्रम सं.	लाइसेंस सं.	चालू तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक व संबंधित भारतीय मानक
1	2	3	4	5
01	3101829	30-03-2010	मै. शील्ड कोटिंग जे 905 (ओ), औद्योगिक क्षेत्र, फेज.3, भिवाडी जिला अलवर 301 019, राजस्थान	15477: 2004 एहेसिव्स फार यूज विद सेरेमिक टाईल्स व मोजाइक्स
02	3101627	05-04-2010	मै. डयूरालाइन इंडिया प्रा. लि., प्लाट नं. एसपी 14 डी, रीको औद्योगिक क्षेत्र, नीमराना 301 705 जिला अलवर, राजस्थान	14930 (भाग 2) : 2001 कन्डयूट सिस्टमस फॉर इलेक्टीकल इनस्टालेशन्स
03	3101728	06-04-2010	मै. प्रकाश इलेक्ट्रोडस प्रा. लि. एफ 147, इन्द्रप्रस्थ औद्योगिक एरिया रोड नं. 5, कोटा, राजस्थान	814 : 2004 कवर्ड इलेक्ट्रोड फॉर मैन्युवल मेटल आर्स वेल्डींग आफ कार्बन व कार्बन मेगनीज स्टील
04	3103227	07-04-2010	मै. बंसीवाला आईरन एण्ड स्टील रोलिंग मिल्स आदर्श नगर, अजमेर, राजस्थान	2062 : 2006 स्टील फॉर जनरल स्ट्रक्चरल परपज
05	3102528	08-04-2010	मै. विश्वकर्मा लेमिनेटस प्रा. लि. ई 165, एमआई एरिया, अलवर 301 030 राजस्थान	2036 : 1995 फिनोलिक लेमिनेटेड शीट्स
06	3104128	09-04-2010	मै. अशोका क्रियेटर्स, जे 59, सीतापुर औद्योगिक क्षेत्र, जयपुर 302 022 राजस्थान	4787 : 1968 टेबल परीक्षा
07	3104229	09-04 2010	मै. अशोका क्रियेटर्स, जे 59, सीतापुर औद्योगिक क्षेत्र, जयपुर 302 022 राजस्थान	5029 : 1979 बैडशीटस, हास्पिटल, जनरल परपज
08	3104330	12-04-2010	मै. इंजिनियर्स इंडिया ई 1162 ए, रीको औद्योगिक क्षेत्र, फेज 4, भिवाडी 301 019, जिला अलवर, राजस्थान	7098 भाग 1 : 1988 क्रासलिक्ड पोलिईथिलिन इन्सुलेटेड पीवीसी सीथेड केबल्स
09	3104431	12-04-2010	मै. जय डकोर इण्स्ट्रीज प्रा. लि., एसपी 182, रीको औद्योगिक क्षेत्र, बेहरोड, जिला अलवर, राजस्थान	2046 : 1995 थेर्मोसेटिंग सेन्थेटिक रेजिन बोन्डेड लेमिनेटेड सीट्स
10	3103833	12-04-2010	मै. श्री सीमेन्ट लि. यूनिट एस सी जी पी, ए यूनिट ऑफ श्री सीमेन्ट लि. राष्ट्रीय राजमार्ग नं. 15 के पास, ग्राम उदयपुर उदासर तह. सूरतगढ, जिला गंगानगर 335 804 राजस्थान	1489 भाग 1 : 1991 पोर्टलेण्ड पोजलाना सीमेन्ट फलाई ऐश बेसड

1	2	3	4	5
11	3105534	15-04-2010	मै. रीटको इंडिया, जी 1-37, करनी औद्योगिक एरिया, पुगंल रोड, बीकानेर, राजस्थान 334 001	7098 भाग 1 : 1988 क्रासलिक्ड पोलिइथिलिन इन्सुलेटेड पीवीसी शीथेड केबल्स फार वर्कीग वोल्टेज अपटू व इनक्लुडिंग 1000 वोल्ट
12	3106536	22-04-2010	मै. सेटेलाईट केबल्स प्रा. लि., एफ 626, औद्योगिक एरिया, भिवाडी 301 019 जिला अलवर, राजस्थान	694 : 1990 पीवीसी इन्सुलेटेड केबल्स फार वर्कीग वोल्टेज अपटू व इन्क्लुडिंग 1000 वो
13	3106334	22-4-2010	मै. सौरभ प्लास्टर लि. 20 मील स्टोन पुंगल गेड, सोभासर औद्योगिक एरिया, बीकानेर, राजस्थान	2547 भाग 1 : 1976, जिप्सम बिल्डिंग प्लास्टर, एक्सक्लुडिंग प्रीमिक्सड लाईटवेट प्लास्टर

[सं सी एम डी/ 13 : 11],
सी के महेश्वरी, वैज्ञानिक जी (प्रमाणन)

MINISTRY OF CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)
(BUREAU OF INDIAN STANDARDS)

New Delhi, the 23rd September, 2010

S.O. 2553.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification Regulation, 1988, the Bureau of Indian Standards, hereby notifies the grant of licence (without Hallmarking) particulars of which are given in the following schedules.

SCHEDULE

Sl. No	Licence No. (CM/L-)	Operative Date	Name and Address of the Licensee	Article/Process Covered by the licences and the relevant IS : Designation
1	2	3	4	5
	APRIL 2010			
01	3101829	30-03-2010	M/s. Shield Coating J-905 (O), Industrial Area, Phase-III, Bhiwadi- 301019 Distt. Alwar (Rajasthan)	15477 : 2004 Adhesives for use with Ceramic Tiles & Mosaics
02	3101627	05-04-2010	M/s. Duraline India Pvt. Ltd. Plot No. SP-14D, RIICO Industrial Area, Neemrana- 301 705, Distt. Alwar (Rajasthan)	14930 (Part 2) : 2001 Conduit Systems for Electrical Installations
03	3101728	06-04-2010	M/s. Parkash Electrodes Pvt. Ltd. F-147, Indraprastha Industrial Area Road No. 5 Kota (Rajasthan)	814 : 2004 Covered Electrodes for Manual Metal Arc Welding of Carbon and Carbon Manganese Steel
04	3103227	07-04-2010	M/s. Bansiwala Iron & Steel Rolling Mills, Adarsh Nagar, Ajmer (Rajasthan)	2062 : 2006 Steel for General Structural Purposes
05	3102528	08-04-2010	M/s. Vishwakarma Laminates (P) Ltd. E-165, M.I.A. Alwar- 301 030 Rajasthan	2036 : 1995 Phenolic Laminated Sheets
06	3104128	09-04-2010	M/s. Ashoka Creators, J-59, Sitapura Industrial Area, Jaipur-302 022, Rajasthan	4787 : 1968 Table, Examination
07	3104228	09-04-2010	M/s. Ashoka Creators, J-59, Sitapura Industrial Area, Jaipur-302 022, Rajasthan	5029 : 1979 Bedseats, Hospitals, General Purposes

1	2	3	4	5
08	3104330	12-04-2010	M/s. Engineers India, E- 1162A, RIICO Industrial Area, Phase-IV, Bhiwadi-301 019 Distt. Alwar Rajasthan	7098 (Part I):1988 Crosslinked Polyethylene Insulated PVC Sheathed Cables for working Voltages upto & Including 1100 V
09	3104431	12-04-2010	M/s. Jay Doo Industries Pvt. Ltd. SP-182, Industrial Area, RIICO Industrial Area, Phase-II, Behror, Distt. Alwar (Rajasthan)	2046 : 1995 Decorative Thermosetting Synthetic Resin Bonded Laminated Sheets
10	3103833	12-04-2010	M/s. Shree Cement Ltd., Unit SCGP (A unit of Shree Cement Ltd.) Near N.H. No. 15, Village Udaipur Udasar Tehsil : Suratgarh, Distt. Ganganagar- 335804 Rajasthan	1489 (Part I): 1991 Portland Pozzolana Cement Fly Ash Based
11	3105534	15-04-2010	M/s. Retco India G 1/37, Karni Indsutrial Area, Pugal Road, Bikaner- 334 001 Rajasthan	7098 (Part I): 1988 Crosslinked Polyethylene Insulated PVC Sheathed Cables for working Voltages upto & Including 1100 V
12	3106536	22-04-2010	M/s. Satellite Cables Private Limited F-626, Industrial Area, Bhiwadi-301019 Distt. Alwar, Rajasthan	694 : 1990 PVC Insulated Cables for working Voltages upto & Including 1100 V
13	3106334	22-04-2010	M/s. Saurabh Plaster Limited 20, Mile Stone Pugal Road, Sobhasar Industrial Area, Bikaner, Rajasthan	2547 (Part I): 1976 Gypsum Building Plaster, Excluding Premixed Lightweight Plaster

[No. CMD/13:11]

C. K. MAHESHWARI, Scientist G (Certifiaction)

नई दिल्ली, 5 अक्तूबर, 2010

का.आ. 2554.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतदद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गये मानक (कों) में संशोधन किया गया/किये गये हैं:

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
1	2	3	4
1	आईएस 2347: 2006 घरेलू प्रेशर कुकर विशिष्ट, (पाँचवा पुनरीक्षण)	संशोधन नं. 1, जून, 2010	1 अक्टूबर, 2010
2	आईएस 2787: 2006 तेल दाब के हीटर विशिष्टि, (तीसरा पुनरीक्षण)	संशोधन नं. 2, सितम्बर, 2010	30 सितम्बर, 2010
3	आईएस 11188 (भाग 1): 1991 वाल्ट (स्ट्रांग रूम) द्वार	संशोधन नं. 6, सितम्बर, 2010	5 अक्टूबर, 2010
4	आईएस 14387: 2005 वाल्टस वायु संवातक विशिष्टि, (पहला पुनरीक्षण)	संशोधन नं. 2 सितम्बर, 2010	30 सितम्बर, 2010

1	2	3	4
5	आईएस 14512: 1998 तिजोरीयुक्त सुरक्षा जमा लाकर-विशिष्टि	संशोधन नं. 1, सितम्बर, 2010	30 सितम्बर, 2010

इस संशोधन की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद,बंगलौर, भोपाल , भुवनेश्वर, कोयम्बतूर, गुवहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ: एम.ई.डी./जी 2:1]

सी. के. वेदा, वैज्ञानिक एफ. एवं प्रमुख यांत्रिक (इंजीनियरिंग)

New Delhi, the 5th, October, 2010

S.O. 2554.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued:

SCHEDULE

Sl. No	No. and year of the Indian Standards	No. and year of The amendment	Date from which the amendment shall have effect
1	2	3	4
1	IS 2347:2006 Domestic pressure cookers - Specification (Fifth Revision)	Amendment No.1 June, 2010	1 October, 2010
2	IS 2787:2006 Oil pressure heaters Specification (Third Revision)	Amendment No.2 September, 2010	30 September, 2010
3	IS 11188(Part 1): 1999 Vault (Strong room) doors	Amendment No.6 September, 2010	5 October, 2010
4	IS 14387:2005 Vaults -Air ventilators - Specification (First Revision)	Amendment No.2 September, 2010	30 September, 2010
5	IS 14512:1998 Safe-cum-safe deposit lockers - Specification	Amendment No.1 September, 2010	30 September, 2010

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: MED/G-2:1]

C. K. VAIDA, Scientist F. & Head (M & E)

कोयला मंत्रालय

नई दिल्ली, 8 अक्तूबर, 2010

का.आ. 2555.—केन्द्रीय सरकार को यह प्रतीत होता है कि, इससे उपाबद्ध अनुसूची में उल्लिखित भूमि में कोयला अभिप्राप्त किये जाने की संभावना है;

इस अधिसूचना के अन्तर्गत आने वाले क्षेत्र के रेखांक संख्या एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/385, तारीख 4 जून, 2010 का निरीक्षण कलेक्टर, शहडोल (मध्य प्रदेश) के कार्यालय में या कोयला नियंत्रक, 1 काउंसिल हाऊस स्ट्रीट, कोलकाता-700001 के कार्यालय में या साउथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर- 495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है;

अत: अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में कोयले का लिए पूर्वेक्षण करने के अपने आशय की सूचना देती है;

उक्त अनुसूची में विहित भूमि में हितबद्ध कोई व्यक्ति—

(i) संपूर्ण भूमि या उसके किसी भाग के अर्जन या ऐसी भूमि में या उस पर के किन्हीं अधिकारों के प्रति आक्षेप कर सकेगा; या

(ii) भूमि में के किसी हित के प्रतिकर या ऐसी भूमि में या उस पर के किन्हीं अधिकारों का दावा कर सकेगा; या

(iii) प्रभावहीन हो गई पूर्वेक्षण अनुज्ञप्तियों, खनन पट्टों के अधीन अर्जित किए जाने पर अधिकारों के लिए प्रतिकर प्राप्त कर सकेगा और उक्त अधिनियम की धारा 13 की उप-धारा (7) में निर्दिष्ट भूमि के कोरों से संग्रहण या अन्य खनिज नमूनों तथा उनके सम्यक् विश्लेषण को तथा किसी अन्य सुसंगत अभिलेख या सामग्रियों की निर्मिति से संबंधित सभी मानचित्र चार्ट और अन्य दस्तावेज परिदत्त कर सकेगा ।

इस अधिसूचना के राजपत्र मे प्रकाशन की तारीख से नब्बे दिन के भीतर, भारसाधक अधिकारी या विभागाध्यक्ष (राजस्व अनुभाग) साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, बिलासपुर-495 006 (छत्तीसगढ़) को भेजेंगे।

अनुसूची

दामुनी भूमिगत खान ब्लॉक, सोहागपुर क्षेत्र, जिला-शहडोल, मध्य प्रदेश में कोयले के पूर्वेक्षण का संक्षिप्त विवरण।

(रेखांक संख्या-एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/385, तारीख 4 जून, 2010)

क्रम सं.	ग्राम का नाम	बंदोबस्त नम्बर	पटवारी हल्का नम्बर	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पण
1.	खैरहा	203	93	सोहागपुर	शहडोल	82.593	भाग
2.	कन्दोहा	67	93	सोहागपुर	शहडोल	225.589	भाग
3.	धमनीकला	469	95	सोहागपुर	शहडोल	8.448	भाग
4.	धमनीखुर्द	468	95	सोहागपुर	शहडोल	11.426	भाग

कुल क्षेत्र:- 328.056 हेक्टर (लगभग)

या 810.63 एकड़ (लगभग)

सीमा वर्णन:-

ब्लाक-1:

क-ख रेखा ग्राम खैरहा-पिपरीया के सम्मिलित सीमा में बिन्दु 'क' से आरंभ होती है और ग्राम खैरहा के मध्य भाग से गुजरती हुई बिन्दु 'ख' पर मिलती है ।

ख-ग रेखा ग्राम कन्दोहा के उत्तरी भाग से होती हुई बिन्दु 'ग' पर मिलती है ।

ग-घ रेखा ग्राम के कन्दोहा के पश्चिमी भाग से होती हुई ग्राम खैरहा-कन्दोहा के सम्मिलित सीमा में बिन्दु 'घ' पर मिलती है।

घ-ङ रेखा ग्राम खैरहा के दक्षिणी भाग से होती हुई ग्राम खैरहा-पिपरीया के सम्मिलित सीमा में बिन्दु 'ङ' पर मिलती हैं।

ङ-क रेखा ग्राम खैरहा-पिपरीया के सम्मिलित सीमा से होती हुई आरंभिक बिन्दु 'क' पर मिलती है।

ब्लाक-2:

च-छ रेखा ग्राम कन्दोहा-छिरहटी के सम्मिलित सीमा में बिन्दु 'च' से आरंभ होती है और ग्राम कन्दोहा-छिरहटी, धमनीखुर्द-छिरहटी के भागत: सम्मिलित सीमा से गुजरती हुई बिन्दु 'छ' पर मिलती है।

छ-ज रेखा ग्राम धमनीखुर्द के पश्चिमी भाग से होती हुई ग्राम धमनीखुर्द-धमनीकला के सम्मिलित सीमा में बिन्दु 'ज' पर मिलती है।

ज-झ रेखा ग्राम धमनीकला के उत्तरी भाग से होती हुई ग्राम धमनीकला-कन्दोहा के सम्मिलित सीमा में बिन्दु 'झ' पर मिलती है।

झ-ञ रेखा ग्राम कन्दोहा के दक्षिण भाग से होती हुई ग्राम खैरहा-कन्दोहा के सम्मिलित सीमा में बिन्दु 'ञ' पर मिलती है।

ञ-च रेखा ग्राम खैरहा-कन्दोहा के भागत: सम्मिलित सीमा से होती हुई ग्राम कन्दोहा के पश्चिमी भाग से गुजरती है और आरंभिक बिन्दु 'च' पर मिलती है।

[फा. सं. 43015/13/2010-पी.आर.आई.डब्ल्यू.-I]

एम. शहाबुद्दीन, अवर सचिव

MINISTRY OF COAL

New Delhi, the 8th October, 2010

S.O. 2555.—Whereas it appears to the Central Government that coal is likely to be obtained from the lands in the locality described in the Schedule annexed hereto;

And whereas, the plan bearing number SECL/BSP/GM (Plg)/Land/385, dated the 4th June, 2010 containing details of the areas of land described in the said Schedule may be inspected at the Office of the Collector, Shahdol (Madhya Pradesh) or at the Office of the Coal Controller, 1, Council House Street, Kolkata-700 001 or at the Office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur - 495 006 (Chhattisgarh) ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Coal Bearing Area (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal from lands described in the said Schedule;

Any person interested in the land described in the said Schedule may—

(i) object to the acquisition of the whole or any part of the land, or of any rights in or over such land; or

(ii) claim an interest in compensation if the land or any rights in or over such land; or

(iii) seek compensation for prospecting licences ceasing to have effect, rights under mining leases being acquired, and deliver all maps, charts and other documents relating to the land, collection from the land of cores or other mineral samples and due analysis thereof and the preparation of any other relevant record or materials referred to in sub-section (7) of Section 13 of the said Act.

To the Officer-In-Charge or Head of the Department (Revenue Section), South Eastern Coalfields Limited, Seepat Road, Bilaspur-495 006 (Chhattisgarh), within a period of ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE

Brief description of the lands to prospect for coal in Damni Underground Mine Block, Sohagpur Area, District- Shahdol, Madhya Pradesh.

(Plan bearing number SECL/BSP/GM (Plg)/Land/385, dated the 4th June, 2010)

Sl. No.	Name of Village	Bandobast number	Patwari halks number	Name of Tehsil	Name of District	Approximate Area in hectares	Remarks
1.	Khairaha	203	93	Sohagpur	Shahdol	82.593	Part
2.	Kandoha	67	93	Sohagpur	Shahdol	225.589	Part
3.	Dhamnikala	469	95	Sohagpur	Shahdol	8.448	Part
4.	Dhamnikhurd	468	95	Sohagpur	Shahdol	11.426	Part

Total :—328.056 hectares (approximately)
or 810.63 acres acres (approximately)

BOUNDARY DESCRIPTION:

Block -1

A-B Line starts from point 'A' on the common boundary of villages Khairaha-Piparia and passes along middle part of village Khairaha and meets at point 'B'.

B-C Line passes along northern part of village Kandoha and meets at point 'C'.

C-D Line passes along western part of village Kandoha and meets at point 'D' on the common boundary of villages Khairaha-Kandoha.

D-E Line passes along southern part of village Khairaha and meets at point 'E' on the common boundary of villages Khairaha-Piparia. .

E-A Line passes along common boundary of villages Khairaha-Piparia and meets at starting point 'A'.

Block-2

F-G Line starts from point 'F' on the common boundary of villages Kandoha - Chhirhati and passes along partly common boundary of villages Kandoha -Chhirhati, Chhirhati-Dhamnikhurd and meets at point 'G'.

G-H Line passes along western part of village Dhamnikhurd and meets at point "H" on the common boundary of villages Dhamnikhurd-Dhamnikala.

H-I Line passes along northern part of village Dhamnikala and meets at point "I" on the common boundary of villages Dhamnikala-Kandoha.

I-J Line passes along southern part of village Kandoha and meets at point "J" on the common boundary of villages Khairaha-Kandoha.

J-F Line passes along partly common boundary of villages Khairaha - Kandoha then along western part of village Kandoha and meets at starting point "F".

[F. No. 43015/13/2010-PRIW-I]
M. SHAHABUDEEN, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 13 अक्तूबर, 2010

का.आ. 2556.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 6 की उप-धारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की नीचे दी गई अनुसूची में यथा उल्लिखित तारीखों की अधिसूचना संख्या का.आ. द्वारा उन अधिसूचनाओं से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया था;

और केन्द्रीय सरकार ने उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त भूमि में जो सभी विलंगमों से मुक्त है, उपयोग का अधिकार इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित किया था;

और सक्षम प्राधिकारी ने केन्द्रीय सरकार को रिपोर्ट दी है कि नाफथा के परिवहन के लिए दिल्ली राज्य में बिजवासन से हरियाणा राज्य में पानीपत तक बिजवासन-पानीपत नाफथा पाइपलाइन परियोजना के क्रियानवयन हेतु इंडियन ऑयल कारपोरेशन लिमिटेड द्वारा उक्त भूमि में पाइपलाइन बिछाई जा चुकी है। अत: उस भूमि के बारे में, जिसका संक्षिप्त विवरण इस अधिसूचना से संलगन अनुसूची में विनिर्दिष्ट किया गया है, प्रचालन की समाप्ति की जाए;

अत: अब, केन्द्रीय सरकार, पेट्रोलियम पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1963 के नियम 4 के स्पष्टीकरण-1 के अधीन अपेक्षानुसार उक्त अनुसूची के स्तंभ 6 में उल्लिखित तारीख को प्रचालन की समाप्ति की तारीख के रूप में घोषित करती है ।

अनुसूची

का.आ. संख्या एवं तारीख	ग्राम	तहसील	जिला	राज्य	प्रचालन की समाप्ति की तारीख
1	2	3	4	5	6
138 दिनांक 24-01-2009	बहोली	पानीपत	पानीपत	हरियाणा	27-4-2010
138 दिनांक 24-01-2009	सिठाना	पानीपत	पानीपत	हरियाणा	27-4-2010
138 दिनांक 24-01-2009	ददलाना	पानीपत	पानीपत	हरियाणा	27-4-2010

1	2	3	4	5	6
138 दिनांक 24-01-2009	बहराना	पानीपत	पानीपत	हरियाणा	27-4-2010
138 दिनांक 24-01-2009	सिवाह	पानीपत	पानीपत	हरियाणा	27-4-2010
138 दिनांक 24-01-2009	हडतडी	पानीपत	पानीपत	हरियाणा	27-4-2010
138 दिनाक 24-01-2009	दिवाना	पानीपत	पानीपत	हरियाणा	27-4-2010

6(1) अधिसूचना के अनुसार उपरोक्त सारे गाँव पानीपत तसहील में दिए गए हैं।

[फ. सं. : आर-25011/43/2010-ओ. आर.-1]

बी.के. दत्ता, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 13th October, 2010

S.O. 2556.—Whereas, by notifications of the Government of India in the Ministry of Petroleum and Natural Gas number S. O. and date as mentioned in the schedule attached issued under sub-section (1) of Section 6 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962) the Central Government acquired the right of user in the lands specified in the Schedule appended to those notifications.

And, whereas, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government vested the right of user in the said land, free from all encumbrances in the Indian Oil Corporation Limited.

And, whereas, the Competent Authority has made a report to the Central Government that the pipeline for the purpose of transportation of Naptha from Bijwasan in the state of Delhi to Panipat in the state of Haryana by Indian Oil Corporation Limited has been laid in the said land, so the operation may be terminated in respect of the land the description of which in brief is specified in the Schedule annexed to this notification;

Now, therefore, as required under explanation-1 of rule 4 of the Petroleum Pipelines (Acquisition of Right of User in Land) Rules. 1963, the Central Government hereby declares the dates mentioned in Column 6 of the said Schedule as the date of termination of operation.

SCHEDULE

S.O. No. and Date	Name of the village	Tehsil	District	State	Date fo Termination of Operation
138 dt. 21-01-2009	Baholi		Panipat	Panipat	Haryana 27-04-2010
138 dt. 24-01-2009	Sithana		Panipat	Panipat	Haryana 27-04-2010
-do-	Dadlana		Panipat	Panipat	Haryana 27-04-2010
-do-	Mehrana		Panipat	Panipat	Haryana 27-04-2010
-do-	Siwah		Panipat	Panipat	Haryana 27-04-2010
-do-	Hartari		Panipat	Panipat	Haryana 27-04-2010
-do-	Diwana		Panipat	Panipat	Haryana 27-04-2010

as per notification u/s 6(1) all the villages are covered under Panipat Tehsil.

[F.No. R-25011/43/2010-OR-I]

B.K. DATTA, Under Secy.

नई दिल्ली, 13 अक्तूबर, 2010

का.आ. 2557.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में स्थापित कोयली-दहेज पाइपलाइन की शाखा आमोद से हजीरा तक पेट्रोलियम उत्पादन के परिवहन के लिए इंडियन ऑयल कार्पोरेशन लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए;

और केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिये यह आवश्यक प्रतीत होता है कि उस भूमि में जिसके भीतर उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है और जो इस अधिसूचना से संलग्न अनुसूची में वर्णित है, उपयोग के अधिकार का अर्जन किया जाए;

अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको उक्त अधिनियम की धारा 3 की उप-धारा (1) के अधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर, भूमि के भीतर पाइपलाइन बिछाए जाने के संबंध में, श्रीमती आशा आर. शाह, सक्षम प्राधिकारी (गुजरात), इंडियन ऑयल कार्पोरेशन लिमिटेड, मकान नं. 3/122, गुजरात रिफाइनरी टाउनशिप, पो.आ. जवाहरनगर, वडोदरा-391 320 (गुजरात) को लिखित रूप में आक्षेप भेज सकेगा ।

अनुसूची

राज्य	जिला	तालुका	गाँव	सर्वेक्षण सं. खण्ड सं.	उप-खण्ड सं.	क्षेत्रफल		
						हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5	6	7	8	9
गुजरात	सुरत	ओलपाड	ऊमराछी	289		00	04	68
				295		00	26	10
				245		00	22	32
				250		00	45	18
				305	A	00	13	64
		ओलपाड	वडोली	664		00	13	76
				669		00	10	99
				671		00	00	29
				675		00	24	62
				676		00	13	75
				573		00	31	91
				574		00	01	27
				575	P2	00	23	65
				639		00	17	10
				584		00	11	23
				585		00	18	74
				586		00	06	19
				587		00	33	60
				596		00	11	82
				595		00	10	25
				594		00	14	40
				601		00	00	81
				593	P1	00	27	50
				591		00	22	79
				605+606	A	00	14	00
				605+606	B	00	14	76

1	2	3	4	5	6	7	8	9
		ओलपाड	वीहारा	162	P3	00	21	60
				151		00	37	62
				154		00	26	10
		ओलपाड	अछारण	238		00	09	74
		ओलपाड	सांढियेर	323		00	20	16
				320	P	00	03	20
				381		00	06	84
				390		00	08	82
		ओलपाड	करमला	63	P2	00	21	38
		ओलपाड	कोसम	222		00	12	08
		ओलपाड	सेगवाछामा	265		00	08	96
				264		00	08	92
				290		00	09	90
				296		00	09	54
				298		00	16	74
				401	A	00	24	84
				405		00	07	56
				400	B	00	08	64
				286	B	00	00	84
		चोर्यासी	वणकला	111		00	22	32
				150		00	19	08
		चोर्यासी	ओखा	107		00	18	00
				106		00	11	52
				108		00	36	54
		चोर्यासी	भेसाण	471		00	06	15
		चोर्यासी	मलगामा	115		00	17	74
				109		00	14	94
				221		00	09	27
		चोर्यासी	भरथाना	5		00	02	82

[फा. सं. आर-25011/1/2008-ओ.आर-I]

बी.के. दत्ता, अवर सचिव

New Delhi, the 13th October, 2010

S.O. **2557**—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of Petroleum Products from Amod (Ex. Existing Koyali to Dahej Pipeline) to Hazira in the State of Gujarat, a branch pipeline should be laid by the Indian Oil Corporation Limited;

And whereas, it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid, and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Goverment hereby declares its intention to acquire the right of user therein;

Any perosn interested in the land described in the said Schedule may, within twenty-one days from the date on which the copies of the notification issued under sub-section (1) of Section 3 of the said Act, as published in the Gazette of India are made available to the general public, object in writing to the laying of the pipeline under the land to Smt. Asha R. Shah, Competent Authority, Indian Oil Corporation Limited, at office Qtrs. No. 3/122, Refinery Township, P.O. Jawaharnagar, Vadodara-391 320 (Gujarat).

SCHEDULE

State	District	Taluka	Village	Survey/Block No.	Sub-Division No.	Area		
						Hect.	Are	Sq.mtr.
1	2	3	4	5	6	7	8	9
Gujarat	Surat	Olpad	Umrachhi	289		00	04	68
				295		00	26	10
				245		00	22	32
				250		00	45	18
				305	A	00	13	64
		Olpad	Vadoli	664		00	13	76
				669		00	10	99
				671		00	00	29
				675		00	24	62
				676		00	13	75
				573		00	31	91
				574		00	01	27
				575	P2	00	23	65
				639		00	17	10
				584		00	11	23
				585		00	18	74
				586		00	06	.19
				587		00	33	60
				596		00	11	82
				595		00	10	23
				594		00	14	40
				601		00	00	81
				593	P1	00	27	50
				591		00	22	79
				605+606	A	00	14	00
				605+606	B	00	14	76
		Olpad	Vihara	162	P3	00	21	60
				151		00	37	62
				154		00	26	10
		Olpad	Achharan	238		00	09	74
		Olpad	Sandhiar	323		00	20	16
				320	P	00	03	20
				381		00	06	84
				390		00	08	82
		Olpad	Karmala	63	P2	00	21	38
		Olpad	Kosam	222		00	12	08
		Olpad	Segwachhama	265		00	08	96
				264		00	08	92
				290		00	09	90

1	2	3	4	5	6	7	8	9
				294		00	09	54
				298		00	16	74
				401	A	00	24	84
				405		00	07	56
				400	B	00	08	64
				286	B	00	00	84
		Choryasi	Vankala	111		00	22	32
				150		00	19	08
		Choryasi	Okha	107		00	18	00
				106		00	11	52
				108		00	36	54
		Choryasi	Bheshan	471		00	06	15
		Choryasi	Malgama	115		00	17	74
				109		00	14	94
				221		00	09	27
		Choryasi	Asarma	5		00	02	82

[F. No. R-25011/1/2008-OR-I]
B.K. DATTA, Under Secy.

नई दिल्ली, 13 अक्तूबर, 2010

का.आ. 2558.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में स्थापित कोयली-दहेज पाइपलाइन की शाखा आमोद से हजीरा तक पेट्रोलियम उत्पादन के परिवहन के लिए इंडियन ऑयल कार्पोरेशन लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए;

और केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिये यह आवश्यक प्रतीत होता है कि उस भूमि में, जिसके भीतर उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है और जो इस अधिसूचना से संलग्न अनुसूची में वर्णित है, उपयोग के अधिकार का अर्जन किया जाए;

अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको उक्त अधिनियम की धारा 3 की उप-धारा (1) के अधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर, भूमि के भीतर पाइपलाइन बिछाए जाने के संबंध में, श्री आशा आर. शाह, सक्षम प्राधिकारी (गुजरात), इंडियन ऑयल कार्पोरेशन लिमिटेड, मकान नं. 3/122, गुजरात रिफाइनरी टाउनशिप, पो.आ. जवाहरनगर, वडोदरा-391 320 (गुजरात) को लिखित रूप में आक्षेप भेज सकेगा ।

अनुसूची

राज्य	जिला	तालुका	गाँव	सर्वेक्षण सं. खण्ड सं.	उप-खण्ड सं.	क्षेत्रफल		
						हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5	6	7	8	9
गुजरात	भरुच	आमोद	इंटोला	386		00	04	68
		आमोद	कोलवणा	825		00	18	32
				1105		00	07	43
				1000		00	03	96
				1251		00	21	96
				1252		00	06	30

1	2	3	4	5	6	7	8	9
				1253		00	06	30
				1282		00	05	40
				1328		00	16	23
				1400	3	00	09	00
				682	3	00	03	60
				755	1	00	14	93
		वागरा	साचण	185		00	23	65
		वागरा	पीसाद	72		00	00	74
		वागरा	सारण	13		00	21	38
				167		00	40	83
				188		00	49	50
				190		00	51	66
		वागरा	साअेखा	141		00	91	31
				168	B	00	41	50
		भरूच	अमलेश्वर	863		00	21	60
		भरूच	नवेठा	149		00	19	98
		भरूच	मुस्तफाबाद	277	P2	00	04	29
			(भाड़भुत)	186		00	39	96
				180/181		00	19	00
				178		00	19	62
				376		00	32	80
				375		00	02	83
				370		00	10	80
				451		00	24	12
				316		00	04	14
		अंकलेश्वर	धंतुरीयां	579		00	09	59
				42	3	00	22	00
				42	4	00	06	00
				181		00	01	32
		अंकलेश्वर	माटीअेड	639		00	21	98
				180		00	14	58
				171		00	28	44
				170		00	20	52
				164		00	12	96
				165		00	10	44
				130		00	30	42
		अंकलेश्वर	मोतवाण	172		00	05	22
				173		00	19	08
		हांसोट	मोठियां	59		00	15	93
				61		00	16	20

1	2	3	4	5	6	7	8	9
		हांसोट	दीगस	402	B	00	08	64
				316		00	23	40
				608	A	00	03	78
				608	B	00	19	98
				452		00	13	25
				440		00	21	60
				416	A	00	29	16
				416	B	00	11	88
				403		00	22	32
				354		00	21	72
				360		00	02	24
				338	A	00	12	20
				338	B	00	12	00
				346		00	00	45
				353		00	00	96
		हांसोट	कलम	28	G	00	01	16
				58		00	05	25
				59		00	17	07
				61		00	21	60
				68	B	00	13	40
				76	A+B	00	06	40
				84	A	00	40	00
		हांसोट	ओभा	1248		00	12	54

[फा. सं. आर-25011/1/2008-ओ.आर.-I]

बी.के दत्ता, अवर सचिव

New Delhi, the 13th October, 2010

S.O. 2558.—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of Petroleum Products from Amod (Ex. Existing Koyali to Dahej Pipeline) to Hazira in the State of Gujarat, a branch pipeline should be laid by the Indian Oil Corporation Limited;

And whereas, it appears to the Cental Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid, and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may, within twenty-one days from the date on which the copies of the notification issued under sub-section (1) of Section 3 of the said Act, as published in the Gazette of India are made available to the general public, object in writing to the laying of the pipeline under the land to Smt. Asha R. Shah, Competent Authority, Indian Oil Corporation Limited, at office Qtrs. No. 3/122, Refinery Township, P.O. Jawaharnagar, Vadodara-391 320 (Gujarat).

SCHEDULE

State	District	Taluka	Village	Survey/Block No.	Sub-Division No.	Area Hect.	Area Are	Area Sq.mtr.
1	2	3	4	5	6	7	8	9
Gujarat	Bharuch	Amod	Intola	386		00	04	68
		Amod	Kolwana	825		00	18	32
				1105		00	07	43
				1000		00	03	96
				1251		00	21	96
				1252		00	06	30
				1253		00	06	30
				1282		00	05	40
				1328		00	16	23
				1400	3	00	09	00
				682	3	00	03	60
				755	1	00	14	93
		Vagra	Sachan	185		00	23	65
		Vagra	Pisad	72		00	00	74
		Vagra	Saran	13		00	21	38
				167		00	40	83
				188		00	49	50
				190		00	51	66
		Vagra	Sayakha	141		00	91	31
				168	B	00	41	50
		Bharuch	Amleshwar	803		00	21	60
		Bharuch	Nandhs	149		00	19	98
		Bharuch	Mustfabad	277	P2	00	04	29
			(Bhadbhut)	186		00	39	96
				180/181		00	19	00
				178		00	19	62
				376		00	32	80
				375		00	02	83
				370		00	10	80
				451		00	24	12
				316		00	04	14
		Ankleshwar	Dhamuria	579		00	09	59
				42	3	00	22	00
				42	4	00	06	00
				181		00	01	32

1	2	3	4	5	6	7	8	9
		Ankleshwar	Matiad	639		00	21	98
				180		00	14	58
				171		00	28	44
				170		00	20	52
				164		00	12	96
			Matiad	165		00	10	44
			(Contd.)	130		00	30	42
		Ankleshwar	Motwan	172		00	05	22
				173		00	19	08
		Hansot	Mothiya	59		00	15	93
				61		00	16	20
		Hansot	Digas	402	B	00	08	64
				316		00	23	40
				608	A	00	03	78
				608	B	00	19	98
				452		00	13	25
				440		00	21	60
				416	A	00	29	16
				416	B	00	11	88
				403		00	22	32
				354		00	21	72
				360		00	02	24
				338	A	00	12	20
				338	B	00	12	00
				346		00	00	45
				353		00	00	96
		Hansot	Kalam	28	G	00	01	16
				58		00	05	25
				59		00	17	07
				61		00	21	60
				68	B	00	13	40
				76	A+B	00	06	40
				84	A	00	40	00
		Hansot	Obha	1248		00	12	54

[F. No. R-25011/1/2008-OR-I]

B.K. DATTA, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 16 सितम्बर, 2010

का.आ. 2559-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरदर्शन केन्द्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-9-2010 को प्राप्त हुआ था।

[सं. एल-42012/106/89-डी. II(बी)]
जोहन तोपनो, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 16th September, 2010

S.O. 2559.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.) of the Central Industrial Tribunal, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Door Darshan Kendra and their workmen, which was received by the Central Government on 16-9-2010.

[No. L-42012/106/89-D-II (B)]
JOHAN TOPNO, Under Secy.

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 4/90

रेफरैंस: केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्र. एल-42012/89-डी-II (बी) दिनांक 11-1-90

श्री अजीत सिंह पुत्र श्री लामन सिंह, 248, उमर बेकरीज, जालुपुरा, जयपुर ..... प्रार्थी

बनाम

डायरेक्टर, दूरदर्शन केन्द्र, झालाना डूंगरी, जयपुर ..... अप्रार्थी

उपस्थित

पीठासीन अधिकारी : श्री एस. के. बंसल, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री कान सिंह राठौड़

अप्रार्थी की ओर से : श्री बी. एस. गूर्जर

दिनांक अवार्ड : 3-1-1998

अवार्ड

यह अधिसूचना भारत सरकार के श्रम मंत्रालय द्वारा निम्नलिखित विवादित बिन्दु का निर्णय करने के लिए प्रेषित की गई है :

"Whether the action of the management of Doordarshan Kendra, Jaipur is justified in terminating the services of Shri Ajit Singh w.e.f. 13-1-89 vide order dtd. 16-2-89 which was received by the workman on 22-2-89? If not to what relief is the workmen entitled?"

2. प्रार्थी ने स्टेटमेंट ऑफ क्लेम पेश किया परन्तु उसके पश्चात् विपक्षी द्वारा ऐतराज किये जाने पर संशोधित अधिसूचना प्रेषित की गई जो निम्नलिखित है:

"Whether the action of the management of Installation Officer, Doordarshan Kendra, Jaipur in terminating the services of Shri Ajit Singh w.e.f. 13-1-89 vide order dtd. 16-2-89 which was received by the workman on 22-2-89 is legal and justified? If not to what relief is the workman entitled?"

3. प्रार्थी ने संशोधित स्टेटमैंट ऑफ क्लेम पेश किया और उसका कथन है कि विपक्षी संस्थान में इन्सटालेशन अधिकारी द्वारा दिनांक 6-1-86 को दैनिक वेतन भोगी वाहन चालक के पद पर उसकी नियुक्ति की गई और तब से ही वह मेहनत व ईमानदारी से कार्य करता रहा और उसका कार्य संतोषजनक रहा । इसके पश्चात् उसके संतोषप्रद कार्य से प्रभावित होकर विपक्षी संस्थान ने दिनांक 5-2-86 से उसे वर्कचार्ज में ले लिया तथा वेतन 1553 रुपये कर दिया । प्रार्थी का यह भी क्लेम है कि उसके पश्चात् प्रार्थी का स्वास्थ्य खराब होने के कारण वह दिनांक 28-12-88 से 11-1-89 तक अवकाश पर था और स्वास्थ्य ठीक होने पर वह दिनांक 12-1-89 को कार्य पर उपस्थित हुआ परन्तु सुरक्षा प्रहरी ने ड्यूटी कार्य पर उसे प्रवेश नहीं होने दिया जबकि गेट पास की अवधि 4-2-89 तक मान्य थी । उसने इन्सटालेशन अधिकारी से सम्पर्क किया और कार्य पर लेने के लिए निवेदन किया तो वह नाराज हो गये और कार्य पर लेने से इन्कार कर दिया । आदेश दिनांक 16-2-89 के द्वारा दिनांक 13-1-89 से उसे सेवा पृथक कर दिया गया जो आदेश प्रार्थी को 22-2-89 को प्राप्त हुआ । प्रार्थी का यह भी क्लेम है कि सेवा मुक्ति से पूर्व प्रार्थी ने कोई दुराचरण नहीं किया परन्तु उसकी सेवा मुक्ति दुराचरण के आधार पर की गई जिसके लिए उसे आरोप पत्र देना चाहिये था जो नहीं दिया गया इसलिए सेवा मुक्ति आदेश अवैध है और कनिष्ठ श्रमिक भी कार्य कर रहे हैं और उसने 240 दिन से अधिक कार्य किया है और एक माह का नोटिस, नोटिस पे अथवा छटनी मुआवजा सेवा मुक्ति से पूर्व नहीं दिया गया इसलिए उसकी सेवा मुक्ति धारा 25-जी व एच औद्योगिक विवाद अधिनियम, 1947 (जो बाद में अधिनियम कहलायेगा) सपठित नियम 77-78 की उल्लंघना में की गई है इसलिए उसकी सेवा समाप्ति अवैध है और उसे पुनः सवेतन सेवा में लिया जाये व 18 प्रतिशत ब्याज भी दिलवाया जाये तथा 5000 रुपये हर्जा भी दिलवाया जाये ।

4. विपक्षी ने जवाब पेश किया और उनका कथन है कि प्रार्थी का नियोजन संस्थापन अधिकारी द्वारा ज्ञापन दिनांक 4-2-86 में वर्णित नियुक्ति शर्तों के अनुसार आदेश दिनांक 4-3-86 के द्वारा निश्चित प्रारंभिक वेतन एवं निश्चित अवधि अथवा निश्चित कार्य के पूर्ण होने तक किया गया था । इसलिए प्रार्थी कोई दादरसी पाने का अधिकारी नहीं है । विपक्षी का यह भी अभिकथन है कि उसका कार्य

कभी संजोषजनक नहीं रहा । यह भी अभिकथन है कि प्रार्थी दिनांक 28-12-88 को शराब पीकर कार्यालय में आया और चैनल गेट के अंदर जाना चाहता था और जब उससे प्रविष्टि पत्र मांगा गया तो उसने इन्कार कर दिया तथा सुरक्षा प्रहरी से गाली गलौच व अभद्र व्यवहार किया तथा एक अन्य कर्मी कैलाश चन्द्र शर्मा का गिरेबान पकड़कर उसे थप्पड़ मारा । इस बीच श्री नैनसिंह रावत व डी. डी. पी. ने बीच बचाव किया और उसके बाद प्रार्थी तुरन्त बाहर की ओर भाग गया । इस संबंध में साक्ष्य ली गई तथा प्रार्थी का कार्य संतोषजनक नहीं रहा और उसकी सेवाएं दिनांक 31-1-89 को समाप्त कर दी गई इसलिए सेवा मुक्ति 16-2-89 को किया जाना तथ्यों के विपरीत है । यह भी अभिकथन है कि विपक्षी विभाग उद्योग नहीं है इसलिए अधिनियम के प्रावधान लागू नहीं होते और क्लेम खारिज किया जाये ।

5. प्रार्थी ने विपक्षी के जबाव का प्रत्युत्तर पेश किया और सेवा मुक्ति को अवैध मानने की प्रार्थना की ।

6. प्रार्थी ने अपना क्लेम साबित करने के लिए स्वयं का शपथ पत्र पेश किया है व प्रदर्श डब्ल्यू-1 से डब्ल्यू-3 दस्तावेज पेश किये हैं । इसके खण्डन में विपक्षी की ओर से श्री जी.सी. माथुर का शपथ पत्र पेश किया गया है व प्रदर्श एम-1 व एम-2 दस्तावेज पेश किये गये हैं । बहस सुनी गई, पत्रावली का अवलोकन किया गया ।

7. प्रार्थी के विद्वान प्रतिनिधि श्री कानसिंह राठौड़ का तर्क है कि विपक्षी विभाग विज्ञापन का कार्य करता है जिससे उसे आय होती है इसलिए यह उद्योग की परिभाषा में आता है । यह भी तर्क है कि प्रार्थी दुर्व्यवहार व मारपीट का आरोप लगाकर सेवा मुक्त किया गया था किन्तु उस समय कार्य समाप्त नहीं हुआ था और मारपीट व दुर्व्यवहार के आरोप को साबित नहीं करवाया गया और प्रार्थी ने 6-1-86 से 13-1-89 तक कार्य किया है जो 240 दिन से अधिक है परन्तु सेवा मुक्त करने से पहले उसे एक माह का नोटिस, नोटिस पे व मुआवजा नहीं दिया गया इसलिए उसकी सेवाएं धारा 25-एफ अधिनियम की उल्लंघना में समाप्त की गई है जो अवैध हैं इसलिए प्रार्थी को पुनः सवेतन सेवा में लिया जाये । श्री राठौड़ का यह भी तर्क है कि ऐसा कोई सर्कूलर कि कब कार्य समाप्त हुआ, नहीं पेश किया गया इसलिए प्रार्थी को पुनः सेवा में लिया जाये ।

8. श्री वी. एस. गुर्जर, विपक्षी के विद्वान प्रतिनिधि का जबाब में कहना है कि प्रार्थी को ड्राइवर के पद पर तीन माह अथवा उससे पूर्व कार्य समाप्त होने तक लगाया गया था इसलिए प्रार्थी को निश्चित अवधि के लिए लगाया गया था और यह प्रकरण धारा 2 (00) (बीबी) अधिनियम की परिभाषा में आता है इसलिए सेवा समाप्ति को सेवा मुक्ति नहीं कहा जा सकता । इसलिए प्रार्थी कोई दादरसी पाने का अधिकारी नहीं है । उनका जबाव में यह भी कहना है कि अगर सेवा समाप्ति को अवैध भी माना जाये तो भी विपक्षी संस्थापन विभाग का कार्य समाप्त हो चुका है इसलिए प्रार्थी को पुनः नियुक्ति के आदेश नहीं दिये जायें क्योंकि वहां पर कार्य हुआ नहीं है इसलिए क्लेम खारिज किया जाये ।

9. प्रार्थी श्री अर्जुन सिंह का शपथ पत्र के पैरा नं. 12 में कथन है कि :

"12- यह कि विपक्षी संस्थान द्वारा भारी मात्रा में विज्ञापन किया जाता है तथा मेन्टीनैन्स व कन्स्ट्रक्शन कार्य होता है । विपक्षी संस्थान के कार्य व प्रकृति के अनुसार वह एक प्रतिष्ठित औद्योगिक संस्थान है ।"

10. विपक्षी के साक्षी जी. सी. माथुर का प्रति परीक्षण में कथन है कि यह सही है कि दूरदर्शन विज्ञापन छापती है । इस प्रकार प्रार्थी के शपथ पत्र व विपक्षी के साक्षी के प्रति परीक्षण से यह साबित होता है कि विपक्षी विभाग विज्ञापन छापती है जिससे आय होती है इसलिए विपक्षी संस्थान उद्योग की परिभाषा में आता है इसलिए क्लेम चलने योग्य है ।

11. विपक्षी की ओर से प्रदर्श एम-1 व एम-2 दस्तावेज पेश किये गये है विपक्षी के साक्षी जी.सी. माथुर का शपथ पत्र के पैरा नं. 1 में कथन है:

"प्रार्थी की नियुक्ति आदेश दिनांक 4-3-86 के द्वारा एक निश्चित अवधि (दिनांक 5-2-86 से 30-4-86 तक) की गई थी अथवा जब तक जयपुर दूरदर्शन केन्द्र का संस्थापन कार्य समाप्त हो । यहां यह तथ्य भी उल्लेखनीय है कि प्रार्थी का कार्य कभी भी संतोषजनक नहीं रहा । जैसा कि अभिलेख पर उपलब्ध सामग्री से सुस्पष्ट है ।"

12. इस प्रकार श्री जी. सी माथुर के कथन व प्रदर्श एम-1 व एम-2 आदेशों के अनुसार प्रार्थी की नियुक्ति तीन माह या उससे पूर्व कार्य समाप्त होने [illegible] की गई थी परन्तु तीन माह में न तो कार्य समाप्त हुआ और न ही इसके बाद इस आदेश का कोई एक्सटेंशन किया गया । इसके पश्चात् प्रार्थी ने 13-1-89 तक लगभग तीन वर्ष से अधिक कार्य किया है इसलिए यह नहीं कहा जा सकता कि प्रार्थी को प्रदर्श एम-1 व एम-2 आदेश के बाद निश्चित अवधि के लिए रखा गया परन्तु उसकी अवधि अनिश्चित थी इसलिए यह प्रकरण धारा 2 (00) (बीबी) अधिनियम के अन्तर्गत नहीं आता । दूसरे, तीन वर्ष से अधिक लम्बे अर्से तक सेवा करने को निश्चित अवधि नहीं कहा जा सकता इसलिए भी यह प्रकरण 2 (00)(बीबी) के अन्तर्गत नहीं आता । तीसरें, प्रार्थी की सेवाएं कार्य समाप्त होने के कारण समाप्त नहीं की गई [illegible] डब्ल्यू -3 समझौता अधिकारी की रिपोर्ट से स्पष्ट है कि उसपर [illegible] आरोप लगाकर प्रार्थी की सेवाएं समाप्त की गई इसलिए भी प्रकरण 2 (00) (बीबी) अधिनियम के अन्तर्गत नहीं आता । श्री जी. सी. माथुर का शपथ पत्र के पैरा नं. 3 में कथन है कि :

"3- प्रार्थी ने दिनांक 28-12-88 को कार्यालय में शराब पीकर चैनल गेट के अन्दर आने की कोशिश की तथा प्रविष्टि पत्र (गेट पास) मांगने पर सुरक्षा प्रहरी से गाली गलौच एवं अभद्र व्यवहार किया तथा एक अन्य कर्मी कैलाश चन्द्र शर्मा का गिरेबान पकड़कर उसे थप्पड़ मारा । इसी बीच श्री नयन सिंह रावत व तत्कालीन उप निदेशक (कार्यक्रम) ने बीच बचाव किया । इस प्रकार प्रार्थी का कार्य कतई संतोषजनक एवं लगन तथा निष्ठापूर्ण नहीं कहा जा सकता ।"

13. श्री जी. सी. माथुर के शपथ पत्र के पैरा नं. 3 के खण्डन में प्रार्थी अजीत सिंह का शपथ पत्र के पैरा नं. 10 में कथन है कि :

> यह कि दिनांक 28-12-88 को मैंने कैलाशचन्द्र शर्मा व नेमासिंह रावत के साथ कोई अभद्र व्यवहार नहीं किया और न ही कोई गाली गलौच किया । मनगढ़न्त तथा झूठा कथन किया है जो मुझे मान्य नहीं है ।''

14. विपक्षी ने इस आरोप को सिद्ध करवाने के लिए कि 28-12-88 को प्रार्थी ने शराब पीकर सुरक्षा प्रहरी के साथ अभद्र व्यवहार किया अथवा कैलाश चन्द्र के साथ मारपीट की, सुरक्षा प्रहरी व कैलाश चन्द्र को पेश नहीं किया है इसलिए यह साबित नहीं होता कि 28-12-88 को प्रार्थी ने शराब पीकर सुरक्षा प्रहरी से अभद्र व्यवहार व गाली गलौच की तथा कैलाश चन्द्र को थप्पड़ मारा । इन परिस्थितियों में अजीत सिंह का कथन कि उसने कैलाश चन्द्र शर्मा व नेमासिंह से कोई अभद्र व्यवहार या मारपीट नहीं की उचित प्रतीत होता है, इसलिए यह आरोप कि प्रार्थी ने अभद्र व्यवहार किया और मारपीट की साबित नहीं होता ।

15. प्रार्थी अजीत सिंह का शपथ पत्र के पैरा 1, 2, 3, व 4 में कथन है कि :

> 1- यह कि मेरी नियुक्ति विपक्षी संस्थान में ड्राईवर के पद पर कार्य करने के लिए दैनिक वेतन पर दिनांक 6-1-86 से की गई थी । मै तभी से लगातार मेहनत व ईमानदारी से कार्य करता आ रहा था । मेरा कार्य सदैव संतोषप्रद रहा है ।
>
> 2- यह कि उसके बाद वह आदेश दिनांक 4-2-86 के द्वारा मुझे ड्राईवर के पद पर 260 रुपये की वेतन श्रृंखला में ले लिया था और मेरी सेवा अवधि 30-4-86 तक बढ़ा दी गई और मैं बदस्तूर कार्य करता रहा हूं । आदेश 20-11-86 से मुझे वेतन श्रृंखला 950-1500 दी गई, आदेश पेश है जो एग्जीबिट डब्ल्यू-1 है ।
>
> 3- यह कि उसके बाद वह आदेश दिनांक 16-2-89 के द्वारा दिनांक 13-1-89 से सेवाएं से अलग कर दिया जो आदेश मुझे 22-2-89 को प्राप्त हुआ था । मैंने उक्त आदेश की फोटो प्रति पेश की है जो एग्जीबिट डब्ल्यू-2 है ।
>
> 4- यह कि मैंने सेवा मुक्ति से पूर्व प्रति वर्ष अथवा सेवा मुक्ति से पूर्व एक वर्ष की सेवा अवधि में 240 दिन से अधिक कार्य किया है ।

16. मेरे विचार में इस साक्ष्य को नहीं मानने का कोई कारण नहीं । दूसरे प्रति परीक्षण में श्री जी. सी. माथुर का कथन है कि अजीत सिंह ने कब कब कार्य नहीं किया जबानी याद नहीं है रिकार्ड देखकर बता सकता हूँ । यह सही है कि प्रदर्श डब्ल्यू-1 हमारे कार्यालय से जारी हुआ है जिसमे अजीत सिंह को 25-11-86 से वर्कचार्ज की स्केल 950 रुपये दी गई आदेश 16-2-89 के द्वारा 13-1-89 से सेवा पृथक किया गया जो प्रदर्श डब्ल्यू-2 है इस प्रकार प्रदर्श डब्ल्यू-1 व डब्ल्यू-2/विपक्षी के साक्षी से साबित होते हैं । यह भी प्रार्थी के कथन का समर्थन करते हैं इसलिए अजीत सिंह के शपथ पत्र व प्रदर्श डब्ल्यू-1 व डब्ल्यू-2 दस्तावेजों से यह साबित होता है कि विपक्षी संस्थान में प्रार्थी को ड्राईवर के पद पर दिनांक 6-1-86 से दैनिक वेतन भोगी के रूप में रखा गया और उसकी सेवाएं 13-1-89 को समाप्त की गई और उसने सेवा समाप्ति से पूर्व एक वर्ष की अवधि में 240 दिन से अधिक कार्य किया परन्तु उसे सेवामुक्त करने से पूर्व एक माह का नोटिस अथवा नोटिस पे व छंटनी का मुआवजा नहीं दिया गया इसलिए उसकी सेवाएं जो विपक्षी द्वारा समाप्त की गई हैं वह धारा 25-एफ औद्योगिक विवाद अधिनियम की उल्लंघना में की गई हैं इसलिए अवैध हैं ।

17. विपक्षी के साक्षी जी.सी. माथुर का कथन है कि प्रार्थी को संस्थापन कार्य पूर्ण होने तक निश्चित अवधि के लिए व निश्चित शर्तो पर नियोजित किया गया था और संस्थापन कार्य पूर्ण होने पर नियोजन स्वत: ही समाप्त हो गया । जी.सी. माथुर का प्रति-परीक्षण में कथन है कि संस्थापन का कार्य दिल्ली, आगरा कहीं भी नहीं चल रहा है इस प्रकार विपक्षी के साक्षी के शपथ पत्र से यह साबित होता है कि विपक्षी संस्थान का कार्य समाप्त हो चुका है । अजीत सिंह का प्रति परीक्षण में कथन है कि यह उसे मालूम नहीं कि इन्सटालेशन का कार्य आज भी चल रहा है । इस प्रकार अजीत सिंह ने भी जी.सी. माथुर के बयानों का खण्डन नहीं किया अत: यह साबित होता है कि विपक्षी का संस्थापन कार्य समाप्त हो चुका है व इन परिस्थितियों में जब संस्थापन का कार्य समाप्त हो चुका है तो प्रार्थी को पुन: नियुक्ति दिया जाना उचित नहीं है । चूंकि प्रार्थी को सेवा से हटाने से पूर्व कोई एक माह का नोटिस अथवा नोटिस के एवज में एक माह का वेतन व छंटनी का मुआवजा नहीं दिया गया इसलिए सेवा समाप्ति के एवज में उसे 15,000 रुपये हर्जाना दिलवाया जाना न्याय हित में उचित प्रतीत होता है जो विपक्षी उसे तीन माह में अदा करेगा अन्यथा इस रकम पर प्रार्थी आज से 12 प्रतिशत ब्याज भी पाने का अधिकारी होगा ।

18. उपरोक्त विवेचन के आधार पर प्रकरण में निम्नलिखित अवार्ड पारित किया जाता है :

> ''इन्सटालेशन ऑफीसर, दूरदर्शन केन्द्र, जयपुर के प्रबंधतंत्र द्वारा प्रार्थी अजीत सिंह की सेवाएं दिनांक 13-1-89 से समाप्त किया जाना उचित व वैद्य नहीं है । परन्तु चूंकि विपक्षी का कार्य समाप्त हो चुका है अत: प्रार्थी पुन: नियोजन का अधिकारी नहीं है अत: बतौर हर्जाना प्रार्थी रूपये 15,000 विपक्षी से प्राप्त करने का अधिकारी है, जो विपक्षी उसे आज की दिनांक से अन्दर तीन माह अदा करे अन्यथा इस रकम पर 12 प्रतिशत ब्याज भी आज से देय होगा ।''

19. अवार्ड आज दिनांक 3-1-98 को खुले न्यायालय में लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जाये ।

एस. के. बंसल, न्यायाधीश

नई दिल्ली, 16 सितम्बर, 2010

का.आ. 2560.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रोग्राम उत्पादन केन्द्र दूरदर्शन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों

के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-9-2010 को प्राप्त हुआ था।

[सं. एल-42012/16/88-डी.-II(बी)]
जोहन तोपनो, अवर सचिव

New Delhi, the 16th September, 2010

S.O. 2560.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No) of the Central Industrial Tribunal, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Programme Production Centre and their workman, which was received by the Central Government on 16-9-2010.

[No. L-42012/16/88-D-II (B)]
JOHAN TOPNO, Under Secy.

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 41/91

रेफरैंस: केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली की अधिसूचना क्र. एल-42012/16/88/डी-II (बी) दिनांक 11-1-91

श्री मोहन लाल कुम्हार पुत्र श्री नारायण लाल कुम्हार, निवासी -चौसधारो का मौहल्ला, छोटा बाजार, सांभर झील, जयपुर ।

..... प्रार्थी

बनाम

इनस्टालेशन ऑफिसर, प्रोग्राम उत्पादन केन्द्र दूरदर्शन, झालना डूंगरी, जयपुर ।

..... अप्रार्थी

उपस्थित

पीठासीन अधिकारी : श्री एस. के. बंसल, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री संतोष भटनागार

अप्रार्थी की ओर से : श्री वीरेन्द्र सिंह गूर्जर

अवार्ड दिनांक : 20-9-1997

अवार्ड

यह श्रम प्रकरण भारत सरकार के श्रम मंत्रालय नई दिल्ली द्वारा इस न्यायालय को निर्णय के लिए अधिसूचना भेजी है जो कि निम्न है :

"Whether the action of the management of Programme Production Centre Jaipur in terminating the services of Shri Mohan Lal Kumhar w.e.f. 28-9-87 is legal and justified? If not to what relief the workmen concerned is entitled to?"

प्रार्थी ने स्टेटमेंट ऑफ क्लेम पेश किया और उसका कथन है कि विपक्षी के यहां उसे 26-10-85 को खाती के पद पर विधिवत नियुक्त किया गया था परन्तु उसकी सेवाएं 28-10-86 को प्रोग्राम अधिकारी ने समाप्त कर दी और उसके पश्चात पक्षकार में एक समझौता 6-4-87 को हुआ जिसमें उसे पुन: सेवा में ले लिया परन्तु उसकी सेवाएं 28-9-87 को समाप्त कर दी गई । जबकि उसने 240 दिन से अधिक कार्य किया था और उसे कोई सेवामुक्ति के समय मुआवजा नहीं दिया गया । इसलिए उसकी सेवाएं औद्योगिक विवाद अधिनियम के प्रावधानों की उल्लघंन में की गई है । प्रार्थी का यह भी कथन है कि उसकी सेवाएं धारा 25 जी,एच औद्योगिक विवाद अधिनियम (जो बाद में अधिनियम) कहलायेगा, सपठित नियम 77, 78 की उल्लधंना में की गई है इसलिए सेवा समाप्ति को अवैध घोषित करते हुए सभी लाभ सहित सेवा में लिया जाए ।

विपक्षी ने जवाब पेश किया और कथन है कि प्रार्थी को आकस्मिक श्रमिक के तौर पर रखा गया था तथा उसे यह बता दिया था कि जैसे ही काम समाप्त होगा उसकी सेवाएं खत्म हो जांयेगी । इसलिए सेवा समाप्ति को सेवा मुक्ति नहीं कहा जा सकता और छंटनी मुआवजा देने की कोई आवश्यकता नहीं थी । विपक्षी ने अन्य कथनों को अस्वीकार किया है ।

पक्षकारान ने कोई साक्ष्य पेश नहीं की है । प्रार्थी के प्रतिनिधि ने हिदायत पैरवी न होना जाहिर किया इसलिए विपक्षी के विद्वान प्रतिनिधि श्री वीरेन्द्र सिंह गुर्जर की बहस सुनी गई ।

प्रार्थी ने अपनी किसी साक्ष्य में यह नहीं साबित नहीं किया कि विपक्षी ने यहां 240 दिन कार्य किया अथवा विपक्षी ने कनिष्ठ श्रमिकों को कार्यरत रखा और प्रार्थी को हटाया । प्रार्थी ने यह भी साबित नहीं किया कि उसके पश्चात किसी खाती को नियोजन करने से पूर्व उसे सेवा में आने की सूचना नहीं दी । इसलिए धारा 25 एफ, जी, एच अधिनियम की उल्लघंना करना साबित नहीं होता । अत: सेवा समाप्ति दि. 28-9-87 उचित व वैध है और प्रार्थी कोई दादरसी पाने का अधिकारी नहीं है ।

आदेश

अत: अवार्ड पारित किया जाता है कि व्यवस्थापक प्रोग्राम प्रोडक्शन सेन्टर जयपुर द्वारा श्रमिक मोहन लाल कुम्हार की सेवा की समाप्ति 28-9-87 उचित व वैध है अत: श्रमिक कोई दादरसी पाने का अधिकारी नहीं है । यह अवार्ड भारत सरकार श्रम मंत्रालय नई दिल्ली को प्रकाशनार्थ भेजा जाये ।

अवार्ड खुले न्यायालय में आज दिनांक 20-9-97 को सुनाया गया ।

एस. के. बंसल, न्यायाधीश

नई दिल्ली, 16 सितम्बर, 2010

का.आ. 2561.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ कन्ट्रोलर,

आयात व निर्यात के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-9-2010 को प्राप्त हुआ था।

[सं. एल-42012/2/87-डी. II(बी)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th September, 2010

S.O. 2561.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Industrial Tribunal Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief Controller, Imports & Exports and their workman, which was received by the Central Government on 16-9-2010.

[No. L-42012/2/87-D-II (B)]

JOHAN TOPNO, Under Secy.

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 61/1991

रेफरैंस: भारत सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्र. एल-42012/2/87/-डी-II (बी) दिनांक 25-10-91

श्री राजेन्द्र कुमार सैन पुत्र श्री रामफूल निवासी ग्रा. पो. चन्दलाई तहसील चाकतू जिला जयपुर ।

..... प्रार्थी

बनाम

दी चीफ कन्ट्रोलर आयात व निर्यात, भारत सरकार सिविल सप्लाई और कारपोरेशन मंत्रालय, तीसरी मंजिल उद्योग भवन, तिलक मार्ग, सी- स्कीम जयपुर ।

..... अप्रार्थी

उपस्थित

प्रार्थी की ओर से : श्री जे. के. अग्रवाल

अप्रार्थी की ओर से : श्री प्रवीण बलवदा

दिनांक अवार्ड : 1-2-94

अवार्ड

केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली ने अपने उपरोक्त आदेश के जरिये निम्न विवाद इस न्यायाधिकरण को वास्ते अधिनिर्णय औद्योगिक विवाद अधिनियम 1947, जिसे तत्पश्चात अधिनियम संबोधित किया है की धारा 10 (1) (घ) के अन्तर्गत प्रेषित किया है:

"Whether the action of the management of Dy. Chief Controller, Imports & Exports, Jaipur in terminating the services of Shri Rajendra Kumar Sain w.e.f. 1-1-86 is justified ? If not to what relief he is entitled to ?"

2. श्रमिक श्री राजेन्द्र कुमार सैन को विपक्षी संस्थान में प्रथम नियुक्ति दिनांक 5-6-84 को 11 रुपये प्रातादन वेतन पर दी गई थी तथा विपक्षी द्वारा उसकी सेवाएं 1-1-86 को समाप्त कर दी गई जिसे अनुचित व अवैध बताते हुए श्रमिक ने न्यायाधिकरण के समक्ष दावा 18-11-91 को प्रस्तुत कर यह अभिकथन किया कि विपक्षी ने उसकी सेवाएं अचानक दिनांक 1-1-86 को बिना किसी कारण के समाप्त कर दी । उसे सेवा मुक्त करने से पहले विपक्षी द्वारा न तो कोई नोटिस दिया गया न नोटिस के एवज में एक माह का वेतन और न ही छंटनी मुआवजा दिया गया । विपक्षी ने कोई वरिष्ठता सूची भी नहीं निकाली जबकि प्रार्थी से कई कनिष्ठ विपक्षी के अधीन कार्यरत थे और प्रार्थी की सेवाएं समाप्त करने के पश्चात भी विपक्षी ने नये व्यक्तियों को नियुक्ति दी किन्तु प्रार्थी श्रमिक को पुन: सेवा में लेने का अवसर नहीं दिया । इस प्रकार प्रार्थी ने औद्योगिक विवाद अधिनियम 1947 की धारा 25-एफ, जी व एच तथा औद्योगिक विवाद नियमावली के नियम 77 व 78 की अवहेलना करना बताते हुए विपक्षी के इस कृत्य को अनुचित श्रम नीति एवं विक्टिमाईजेशन की संज्ञा देते हुए यह क्लेम संस्थित किया है ।

3. अप्रार्थी नियोजक की ओर से वादोत्तर दिनांक 21-4-92 को प्रस्तुत कर यह अभिकथन किया गया है कि प्रार्थी को पूर्ण रूप से अस्थाई तौर पर दैनिक वेतन भोगी के रूप में रखा गया था और उसकी सेवाएं 1-1-86 को समाप्त करना भी स्वीकार किया गया है किन्तु विपक्षी का यह कथन है कि विपक्षी भारत सरकार के अधीनस्थ एक कार्यालय है जिसके अन्तर्गत भारत सरकार की नीति के अनुसार आयात निर्यात के लाइसैन्स दिये जाते हैं और जो किसी निजी संस्था द्वारा नहीं दिये जा सकते । इस कार्यालय के समस्त कर्मचारी भारत सरकार के द्वारा निर्मित सेवा नियमों के अनुसार ही भर्ती किये जाते हैं । विपक्षी संस्थान अधिनियम 1947 के अंतर्गत उद्योग की परिभाषा में नहीं आता है अत: यह मामला इस न्यायाधिकरण के क्षेत्राधिकार में नहीं आता है ।

4. प्रार्थी राजेन्द्र कुमार सैन ने अपनी साक्ष्य में स्वंय को परीक्षित किया है तथा प्रालेखीय सबूत में तीन प्रलेख प्रदर्श डब्ल्यू-1 नियुक्ति पत्र, दिनांक 5-6-84 से 21-12-85 तक काम करने का प्रमाण पत्र प्रदर्श डब्ल्यू-2 एवं प्रदर्श डब्ल्यू-3 विफल वार्ता प्रतिवेदन प्रदर्शित कराये हैं । विपक्षी ने अपनी साक्ष्य मे श्री सुरेश कुमार ऑफिसर इंचार्ज, उप मुख्य नियंत्रक आयात व निर्यात के बयान कराये हैं । तत्पश्चात मैंने पक्षकारान् के प्रतिनिधिगण की बहस विस्तारपूर्वक सुनी । पत्रावली, पत्रावली पर उपलब्ध सामग्री एवं विधि के सुसंगत प्रावधानों का ध्यानपूर्वक परिशीलन किया ।

5. पक्षकारान् की साक्ष्य का मूल्यांकन करने के पश्चात यह एक निर्विवाद तथ्य सामने आया है कि प्रार्थी ने विपक्षी संस्थान में प्रथम नियुक्ति दिनांक 5-6-84 को दैनिक वेतन भोगी कर्मचारी के रूप में दी गई थी । विपक्षी के साक्षी श्री सुरेश कुमार ने अपने प्रति परीक्षण में इस तथ्य को स्वीकार किया है कि प्रार्थी श्रमिक को

5-6-84 को 11 रूपये प्रतिदिन वेतन पर रखा गया था । यह भी निर्विवाद तथ्य है कि प्रार्थी की सेवाएं विपक्षी द्वारा 1-1-86 को समाप्त करते समय उसे कोई नोटिस, नोटिस पे एवं छंटनी मुआवजा नहीं दिया गया ना ही कोई वरिष्ठता सूची बनाई गई ।

6. विपक्षी की मुख्य प्रति रक्षा यह रही है कि विपक्षी संस्थान ''उद्योग'' नहीं है अत: अधिनियम 1947 के प्रावधान आकर्षित नहीं होते । विपक्षी के साक्षी श्री सुरेश कुमार का कथन है कि विपक्षी भारत सरकार के अधीनस्थ एक कार्यालय है जो भारत सरकार की नीति के अनुसार ही आयात व निर्यात के लाइसेंस जारी करता है जो कि किसी निजी संस्था द्वारा नहीं किया जा सकता ।

7. प्रार्थी के विद्वान प्रतिनिधि श्री जे के. अग्रवाल ने न्याय दृष्टान्त 1978 लैब. आई. सी. 467 (एस. सी.) बैंगलोर वाटर सप्लाई बनाम ए. राजप्पा तथा न्याय दृष्टान्त 1971 (II) एल. एल. जे पेज 630 मैनेजमैंट ऑफ दी फैडरेशन ऑफ इंडियन चैम्बर्स ऑफ कामर्स एंड इन्डस्ट्री बनाम श्री आर. के. मित्तल पर भरोसा करते हुए यह दलील दी कि विपक्षी संस्थान ''उद्योग'' की परिभाषा में आता है ।

8. विपक्षी के विद्वान प्रतिनिधि श्री बलवदा ने यह दलील दी कि विपक्षी भारत सरकार के अधीनस्थ एक कार्यालय है जो आयात व निर्यात के लाइसेंस जारी करता है जो किसी निजी संस्थान द्वारा नहीं किये जा सकते । यह भी दलील दी कि आयात निर्यात की नीति सोवरिन प्रकृति की है जिसे विपक्षी लागू करता है इस कारण विपक्षी संस्थान ''उद्योग'' की परिभाषा में नहीं आता । अपनी दलीलों के समर्थन में श्री बलवदा ने सी.ए.टी. जयपुर के मुकदमा सं. ओ.ए. नं. 212/92 निर्णय दिनांक 14-9-92 भीमसेन कथूरिया बनाम यूनियन ऑफ इण्डिया पर भरोसा किया जिसमें विपक्षी संस्थान को उद्योग नहीं माना जाकर श्रमिक का आवेदन पत्र खारिज किया गया है ।

9. यह उल्लेखनीय है कि अधिनियम 1947 की धारा 2 (जे) में ''उद्योग'' को परिभाषित किया है और इसके अनुसार केन्द्र सरकार की ऐसी गतिविधियां जो सोवरिन फन्क्शन्स यानि रीगल फन्क्शन्स की परिधि में आती है उनको उद्योग की परिभाषा में सम्मिलित नहीं किया गया है । विपक्षी के साक्षी श्री सुरेश कुमार, उप मुख्य नियंत्रक (आयात व निर्यात) ने यह प्रमाणित किया है कि विपक्षी भारत सरकार के अधीनस्थ कार्यालय है जो भारत सरकार की नीति अनुसार आयात व निर्यात के लाइसेंस जारी करता है जोकि किसी और निजी संस्था द्वारा नहीं किये जा सकते इस कारण विपक्षी संस्थान ''उद्योग'' की परिभाषा में नहीं आता है । इस साक्षी ने अपने प्रति परीक्षण में यह कथन किया है कि भारत सरकार की आयात व निर्यात की नीति सोवरिन प्रकृति की है उसे विपक्षी संस्थान लागू करता है जो संविधान के तहत भारत सरकार में ही निहित है । इस साक्षी ने यह भी कथन किया है कि सरकार जनहित में यह कार्य करती है और लाइसेंस जारी करने की मात्र प्रोसीजरल फीस वसूल की जाती है । प्रार्थी द्वारा विपक्षी के इस साक्ष्य का खण्डन नहीं हुआ है । अत: मेरी राय में विपक्षी संस्थान द्वारा सम्पन्न किया जाने वाला कार्य सोवरेन व रीगल फन्क्शन्स ऑफ दी स्टेट के अन्तर्गत ही आता है इसलिए विपक्षी संस्थान ''उद्योग'' की परिभाषा में नहीं आता । प्रार्थी के विद्वान प्रतिनिधि द्वारा प्रस्तुत न्याय दृष्टान्त हस्तगत मामले के तथ्यों और परिस्थितियों से भिन्न होने के कारण लागू नही होते । भारत सरकार की नीति के अनुसार विपक्षी संस्थान द्वारा आयात निर्यात के लाइसेंस जारी किये जाते हैं जो कार्य किसी निजी संस्थान द्वारा नहीं किया जा सकता और भारत सरकार द्वारा जनहित में यह कार्य किया जाता है ।

10. तथ्यों और विधि के उपरोक्त समस्त कारणों से इस निर्देश का अधिनिर्णय निम्न प्रकार किया जाता है:

> ''विपक्षी संस्थान ''उद्योग'' की परिभाषा में नहीं आने के कारण इस पर अधिनियम 1947 के प्रावधान लागू नहीं होते हैं । रैफरैंस बैड-इन-लॉ होने के कारण चलने योग्य नहीं है। अत: श्रमिक श्री राजेन्द्र कुमार सैन किसी राहत को प्राप्त करने का अधिकारी नहीं है ।''

11. अवार्ड की प्रति भारत सरकार को प्रकाशनार्थ नियमानुसार भेजी जावे ।

शंकर लाल जैन, पीठासीन अधिकारी

नई दिल्ली, 16 सितम्बर, 2010

का.आ. 2562.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार लघु उद्योग सेवा संस्थान के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-9-2010 को प्राप्त हुआ था।

[सं. एल-42012/बी-2/87-डी. II(बी)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th September, 2010

S.O. 2562.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Industrial Tribunal Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Small Industires Service Institute and their workman, which was received by the Central Government on 16-9-2010.

[No. L-42012/B-2/87-D-II(B)]

JOHAN TOPNO, Under Secy.

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, राजस्थान, जयपुर

केस नं. सी.आई.टी. 108/89

रेफरैंस: केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-42012/बी.2/87/डी-II (बी) दिनांक 23-10-89

श्री कन्हैया लाल पुत्र श्री पन्ना लाल जाति रैगर निवासी खारा कुंआ के पास, दौसा जिला- जयपुर ।

..... प्रार्थी

बनाम

1. सहायक निदेशक (प्रशासन) लघु उद्योग सेवा संस्थान एम.आई. रोड (पूनम ढाबा के पास) जयपुर ।

2. निदेशक, लघु उद्योग सेवा संस्थान एम.आई. रोड (पूनम ढाबा के पास) जयपुर ।

..... अप्रार्थीगण

उपस्थित

माननीय न्यायाधिकरण श्री के. एल. व्यास, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री अरविन्द सिंह

अप्रार्थी की ओर से : श्री एम. रफीक

दिनांक अवार्ड : 6-6-1994

अवार्ड

केन्द्रीय सरकार द्वारा निम्न औद्योगिक विवाद अधिनिर्णय हेतु इस न्यायाधिकरण में प्रेषित किया है:

"Whether the action of the management of S.I.S.I. Jaipur in terminating the services of Shri Kanahya Lal casual labour w.e.f. is justified? If not what relief and from what date he is entitled?"

2. दोनों पक्षों को नोटिस जारी किये गये । श्रमिक ने अपने क्लेम में यह बताया है कि उसकी नियुक्ति लघु उद्योग सेवा संस्थान, जयपुर (जिसे बाद में नियोजक संबोधित किया जायेगा) द्वारा 14-1-85 को 9 रूपये दैनिक वेतन पर की गई थी जो बाद में बढ़ाकर 12 रूपये 75 पैसे कर दी गई । श्रमिक ने नियोजक के यहां एक कलैण्डर वर्ष में 240 दिन से अधिक कार्य किया था व उसके पश्चात 29-8-86 को उसकी सेवाएं आदेश दिनांक 21-8-86 से समाप्त कर दी गई । श्रमिक के अनुसार उसे सेवा से हटाते समय धारा 25-एफ, 25-जी व 25-एच के प्रावधानों की पालना नहीं की गई इसलिए वह पुनः सेवा में बहाल होने का व समस्त बकाया वेतन प्राप्त करने का अधिकारी है ।

3. नियोजक की ओर से क्लेम के जवाब में इन तथ्यों को स्वीकार किया गया है कि श्रमिक को नियोजक द्वारा दैनिक वेतन पर 14-1-85 को सेवा में रखा गया था तथा 21-8-86 के आदेश से उसकी सेवाएं 29-8-86 से समाप्त की गई क्योंकि अप्रार्थी संस्थान को श्रमिक की सेवाओं की आवश्यकता नहीं थी । यह अभिकथित किया गया है कि चूंकि श्रमिक की सेवाएं आवश्यकता नहीं होने के कारण समाप्त की गई थी इसलिए यह कार्यवाही छंटनी की परिभाषा में नहीं आती । सबसे महत्वपूर्ण प्रतिरक्षा जवाब में यह ली गई है कि नियोजक संस्थान उद्योग की परिभाषा में नहीं आता इसलिए श्रमिक को सेवा से हटाने की कार्यवाही औद्योगिक विवाद अधिनियम के प्रावधान के तहत सुनवाई योग्य नहीं है ।

4. मौखिक साक्ष्य के रूप में श्रमिक को स्वंय का शपथ पत्र व नियोजक की ओर से श्री रवि कपूर, उप निदेशक का शपथ पत्र प्रस्तुत किया गया है । दोनो शपथ पत्रों को संबंधित पक्ष द्वारा प्रति-परीक्षण किया गया है । श्रमिक की ओर से प्रदर्श डब्ल्यू-1 से प्रदर्श डब्ल्यू-2 प्रलेख प्रस्तुत किये गये हैं । दिनांक 7-8-93 के प्रार्थना पत्र के साथ प्रदर्श एम-1 व कुछ अन्य प्रलेख की फोटो प्रति नियोजक की ओर से प्रस्तुत की गई है । दोनो पक्षों की बहस सुनी गई ।

5. श्रमिक ने अपने शपथ पत्र में दिनांक 14-1-85 से नियोजक के यहां कार्य करना व 29-8-86 से उसे सेवा मुक्त करना बताया है । सेवा मुक्ति का आदेश प्रदर्श डब्ल्यू-1 है । श्रमिक का यह भी कथन है कि उसने सेवा मुक्ति से पूर्व एक कलैण्डर वर्ष में लगातार 240 दिन से अधिक काम किया था । इसके आगे श्रमिक का कथन है कि सेवा मुक्ति के समय उसे न तो छंटनी का मुआवजा दिया गया व न ही धारा 25-जी व एच औद्योगिक विवाद अधिनियम के प्रावधानों की पालना की गई । जो जिरह गवाह से की गई है उसमें उसने यह बताया है कि 1-1-86 से 29-8-86 तक उसने 224 दिन काम किया होगा । इस तथ्य से मामले के गुण दोष पर कोई प्रभाव नहीं पड़ता क्योंकि 29-8-86 से एक वर्ष पूर्व से यह गणना की जानी है कि श्रमिक ने 240 दिन से अधिक कार्य किया या नहीं । इसके अतिरिक्त कोई भी महत्वपूर्ण जिरह गवाह से नहीं की गई है । नियोजक की ओर से श्री रवि कपूर का जो शपथ पत्र प्रस्तुत हुआ है उसमें श्रमिक की नियुक्ति व सेवा मुक्ति के संबंध में कोई भी तथ्य उल्लिखित नहीं है । इसके अलावा जिरह में यह पाया है कि श्रमिक ने नियोजक के यहां कुल 579 दिन काम किया था व यह भी आया है कि सेवा मुक्ति से पूर्व एक वर्ष में श्रमिक ने 240 दिन से अधिक काम किया है । यह भी श्री कपूर ने स्वीकार किया है कि सेवा मुक्ति से पूर्व कोई नोटिस मुआवजा श्रमिक को नहीं दिया गया व न ही धारा 25-जी व 25-एच के प्रावधान की पालना की गई । गवाह श्री रवि कपूर का शपथ पत्र मुख्य रूप से इस तथ्य को बताने के लिए है कि उनका संस्थान "उद्योग" की परिभाषा में नहीं आता है । इस बिन्दु पर विनिश्चय व विवेचन बाद में किया जायेगा । दोनों पक्षों की जो मौखिक साक्ष्य प्रस्तुत हुई है उससे यह तथ्य निर्विवाद साबित है कि श्रमिक ने सेवा मुक्ति से पूर्व एक कलैण्डर वर्ष में 240 दिन से अधिक कार्य नियोजक के यहां किया था व धारा 25-एफ, जी व एच की पालना नियोजक द्वारा सेवा मुक्ति से पूर्व नहीं की गई है । श्री कपूर की जिरह में यह तथ्य भर माना गया है कि वर्तमान में 98 अधिकारी व कर्मचारी नियोजक संस्थान में कार्यरत हैं । यह बताने में गवाह असमर्थ रहा है कि श्रमिक को नौकरी से हटाया गया उस समय दैनिक वेतन पर कितने कर्मचारी कार्यरत थे । गवाह द्वारा यह साबित नहीं किया गया है कि श्रमिक कनिष्ठतम होने के कारण उसे सेवा से हटाया गया था । इस प्रकार यह तथ्य सम्पूर्ण रूप से साबित है कि श्रमिक की सेवा मुक्ति औद्योगिक विवाद अधिनियम के प्रावधानों के अनुसार नहीं की गई है तथा यदि नियोजक संस्थान "उद्योग" की परिभाषा में आता है तो निश्चित रूप से श्रमिक क्लेम में मांगा गया अनुतोष प्राप्त करने का अधिकारी है ।

6. अगला व सबसे महत्वपूर्ण बिन्दु विनिश्चय हेतु इस मामले में यह है कि क्या नियोजक संस्थान "उद्योग" की परिभाषा में आता

है ? नियोजक के विद्वान प्रतिनिधि ने इस संबंध में प्रस्तुत शपथ पत्र व संस्थान के प्रस्तुत ब्रोचर (विवरणिका) के आधार पर यह बताने का प्रयास किया है कि उनका मुख्य रूप से कार्य उद्योगों को तकनीकी व वित्तीय सलाह देना तथा प्रशिक्षण देना है व इसे कारण संस्थान उद्योग की परिभाषा में नहीं आता है । प्रदर्श एम-1 ऑफिस मैमोरेन्डम नियोजक की ओर से साक्ष्य में प्रस्तुत किया गया है जो इसी मामले से संबंधित है इसमें उद्योग सचिवालय के उप निदेशक द्वारा यह लिखा गया है कि नियोजक संस्थान उद्योग की परिभाषा में नहीं आता है इसलिए विवाद को न्यायाधिकरण में नहीं भेजा जावे । इसमें कुछ विधि दृष्टान्तों का उल्लेख भी किया गया है । उप निदेशक की राय से न्यायाधिकरण सहमत हो यह आवश्यक नहीं है किन्तु इस पर विचार किया जाना निश्चित रूप से सुसंगत है । इसके अतिरिक्त नियोजक द्वारा केन्द्रीय औद्योगिक न्यायाधिकरण बैंगलोर का एक निर्णय दिनांक 8 अगस्त, 1986 प्रस्तुत किया है जिसमें न्यायाधिकरण द्वारा इस प्रकार के संस्थान को उद्योग की परिभाषा में नहीं माना गया । सर्वप्रथम नियोजक द्वारा प्रस्तुत विवरणिका के आधार पर यह उल्लेख किया जाना आवश्यक है कि नियोजक संस्थान के मुख्य रूप ये क्या कार्य हैं ? विवरणिका के अनुसार उद्योगों को तकनीकी सहायता प्रदान करना, प्रशिक्षण की सुविधाएं प्रदान करना, आर्थिक एवं सांख्यिकी सूचनाएं उपलब्ध कराना, विपणन हेतु उद्योगों की सहायता करना, निर्यात सवंर्धन हेतु सलाह देना व व्यापार मेलों व प्रशिक्षण में भाग लेना, तकनीकी साहित्य तैयार करना एवं द्वैनात्मक संगोष्ठियां आयोजित करना नियोजक संस्थान के मुख्य कार्य बताये गये हैं । इसके अलावा सामान्य सेवाओं के रूप में उल्लिखित उद्योगों के लिए सामान्य इंजीनियरिंग एवं हीट ट्रीटमेंट नाम मात्र के शुल्क सप्लाई करना एवं अन्य औजार, फिक्सचर्स बनाना व उद्योगों को नाम शुल्क पर सप्लाई करना भी विवरणिका में लिखा है । नियोजक संस्थान केन्द्र सरकार के अन्तर्गत है व उसका बजट भी केन्द्र सरकार द्वारा स्वीकृत किया जाता है । इस संबंध में बजट स्वीकृती के पत्रों की प्रतिलिपियां भी प्रस्तुत की गई हैं । इन तथ्यों की पृष्ठभूमि को ध्यान में रखते हुए जो विधि दृष्टान्त दोनो पक्षों की ओर से प्रस्तुत किये गये हैं उन पर विचार करके यह निर्णित किया जाना है कि नियोजक संस्थान उद्योग की परिभाषा में आता है अथवा नहीं । नियोजक द्वारा जो उद्योग सचिवालय मैमोरेन्डम व कर्नाटक केन्द्रीय न्यायाधिकरण के निर्णय प्रस्तुत किये गये हैं वह अधिक महत्वपूर्ण नहीं हैं क्योंकि इस संबंध में माननीय सर्वोच्च न्यायालय द्वारा अपने विभिन्न निर्णयों में उद्योग की विस्तृत व स्पष्ट परिभाषा देते हुए यह प्रतिपादित किया है कि किस प्रकार का संस्थान उद्योग की परिभाषा में आता है ?

7. दोनों पक्षों की और से माननीय सर्वोच्च न्यायालय के 2 निर्णय 1978 एल.आई.सी. (एस.सी) 467, बंगलौर वाटर सप्लाई बनाम ए. राजप्पा एवं 1989 एल.आई.सी. (एस.सी) 1317, ए. सुन्दरम बाला बनाम गोआ, दमन डयू राज्य प्रस्तुत किये गये हैं । बंगलौर वाटर सप्लाई के निर्णय से पूर्व माननीय सर्वोच्य न्यायालय द्वारा जो उद्योग की परिभाषा अन्य निर्णयों में दी गई थी उन्हें अपास्त करते हुए इस मामले में उद्योग की सुस्पष्ट व विस्तृत व्याख्या की गई है । बंगलौर वाटर सप्लाई के मामले में किसी भी संस्थान को उद्योग मानने के लिए जो मानदण्ड निर्धारित किये गये हैं वे निम्न प्रकार है:

> 'Industry' as defined in S.2 (j) has a wide import.
>
> Where there is (i) systematic activity (ii) organised by co-operation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making on a large scale, prasad or food) prima facie, there is an 'industry' in that enterprise.
>
> absence of profit motive or gainfull objective is irrelevant, be the venture in the public, joint private or other sector.
>
> The true focus is functional and the secisive test is the nature of the activity with special emphasis on the employer-employee relations.
>
> In the organisation is the a trade or business it does not cease to be one because of philanthropy animating the undertaking.
>
> Although S.2 (j) uses words of the widest amplitude in its two limbs their meaning cannot be magnified to over reach itself.

8. 1989 एल.आई.सी. 1317 में बैंगलोर वाटर सप्लाई के मामले में प्रतिपादित सिद्धान्तों का अनुसरण करते हुए यह माना गया है कि शिक्षण संस्थान भी उद्योग की परिभाषा में आता है । माननीय सर्वोच्च न्यायालय द्वारा दिये गये दोनों निर्णयों में वह सिद्धान्त प्रतिपादित किया गया है कि जिस संस्थान के मामले में "उद्योग" की परिभाषा के तीनों मानदण्ड लागू होते हों तो वह उद्योग की परिभाषा में शामिल होगा चाहे वह शैक्षणिक संस्थान हो अथवा कोई क्लब या अन्य प्रकार की संस्थान हो ।

9. नियोजक की ओर से इलाहबाद उच्च न्यायालय का एक निर्णय एफ.एल.आर. 1981 पेज 328 रमेश चन्द्र सिंह बनाम भारत संघ प्रस्तुत किया गया है जिसमें माननीय सर्वोच्च न्यायालय के बैंगलोर वाटर सप्लाई वाले मामले के सिद्धान्तों पर व्याख्या करते हुए नेशनल शुगर इंस्टीट्यूट को इस आधार पर उद्योग की परिभाषा में नहीं माना गया है क्योंकि तथ्यों के अनुसार यह संस्थान मुख्य रूप से रिसर्च के कार्य में लगी हुई है, तथा अपने रिसर्च के आधार पर उद्योगों को तकनीकी सलाह देकर लाभान्वित करती है । माननीय न्यायाधीशों ने जो कारण उक्त संस्थान को उद्योग नहीं मानने के दिये हैं उन पर अधिक विवेचन की आवश्यकता इसलिए नहीं है क्योंकि तथ्यों के आधार पर वर्तमान नियोजक संस्थान का मामला निश्चित रूप से सुभिन्न (डिस्टिंगविशेबिल) है क्योंकि जैसा कि ऊपर उल्लिखित किया गया है नियोजक संस्थान द्वारा तकनीकी, वित्तीय व प्रशिक्षण के संबंध में सलाह के अलावा शुल्क प्राप्तकर कुछ औजार भी उद्योगों को सप्लाई किये जाते हैं । इसके अलावा एक अन्य निर्णय बम्बई

उच्च न्यायालय का रिट याचिका नं. 1808/87 निर्णय दिनांक 31-10-90 की फोटो प्रति नियोजक की ओर से प्रस्तुत की गई है जिसमें बाम्बे आरयन एंड स्टील लेबर बोर्ड को इस आधार पर उद्योग नहीं माना गया क्योंकि वह मुख्य रूप से राज्य के सोवरिन कंपशनस (प्रभुत्तासम्पन्न कार्य) का कार्य करते हैं । इस प्रकरण के तथ्य भी निश्चित रूप से वर्तमान मामले के तथ्यों से भिन्न होने के कारण नियोजक को निर्णय में प्रतिपादित सिद्धान्तों से कोई लाभ नहीं मिल सकता । नियोजक व श्रमिक की ओर से कुछ अन्य निर्णय भी इस संबंध में प्रस्तुत किये गये हैं जो मामले के तथ्यों से असंगत होने के कारण उन पर विचार किया जाना आवश्यक नहीं है ।

10. नियोजक संस्थान द्वारा किये जाने वाले कार्यों के संबंध में जो टिप्पणी की गई हैं उन्हें तथा माननीय सर्वोच्च न्यायालय द्वारा दिये गये बैंगलोर वाटर सप्लाई तथा ए. सुन्दरम बाल के मामले में उद्योग की परिभाषा के संबंध में प्रतिपादित सिद्धान्तों को ध्यान में रखते हुए यह माना जाता है कि नियोजक संस्थान उद्योग की परिभाषा में आता है व इस कारण श्रमिक औद्योगिक श्रमिक की परिभाषा में आता है व चूंकि श्रमिक की सेवा मुक्ति के मामले में औद्योगिक विवाद अधिनियम, 1947 की धारा 25-एफ, 25-जी व 25-एच के प्रावधान की पालना नहीं की गई है इसलिए श्रमिक की सेवा मुक्ति का आदेश अवैध व अनुचित होने से अपास्त किये जाने योग्य है ।

11. श्रमिक द्वारा समझौता अधिकारी के समक्ष यह विवाद सेवा मुक्ति के थोड़े समय बाद प्रस्तुत किया गया था जैसा कि प्रदर्श डब्ल्यू-2 समझौता अधिकारी की रिपोर्ट से स्पष्ट होता है । उसके पश्चात् यह विवाद अधिनिर्णय हेतु न्यायाधिकरण में प्रेषित किया गया था व अधिनिर्णय में जो भी विलम्ब हुआ है उसके लिए प्रथम दृष्टया श्रमिक का कोई भी दोष प्रकट नहीं होता है । श्रमिक को पिछला सम्पूर्ण बकाया वेतन सामान्य रूप से स्वीकृत किया जाना आवश्यक है व नियोजक की ओर से इस संबंध में कोई भी मौखिक या लिखित प्रतिरक्षा नहीं ली गई है । यदि श्रमिक द्वारा सेवा मुक्ति के पश्चात् अन्यत्र कोई कार्य आजीविका के लिए किया गया है तो उसका निपटारा धारा 33 (सी) (2) के प्रार्थना पत्र के अन्तर्गत नियमानुसार किया जा सकता है ।

12. प्रस्तुत विवाद का अधिनिर्णय इस प्रकार किया जाता है कि श्रमिक कन्हैया लाल के विरूद्ध नियोजक संस्थान द्वारा पारित सेवा मुक्ति का आदेश दिनांक 29-7-86 अनुचित व अवैध है तथा श्रमिक उस तिथि से सेवा में पुनः बहाल होने का व सम्पूर्ण पिछला बकाया वेतनमय सेवा की निरन्तरता प्राप्त करने का अधिकारी है ।

13. अवार्ड की प्रति केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजी जाये ।

के. एल. ब्यास, न्यायाधीश

नई दिल्ली, 16 सितम्बर, 2010

का.आ. 2563.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल कैटल ब्रिडिंग फॉर्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-9-2010 को प्राप्त हुआ था।

[सं. एल-42011/30/86-डी. II(बी)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th September, 2010

S.O. 2563.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central hereby publishes the award of the Central Industrial Tribunal, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Cattle Breeding Farm and their workman, which was received by the Central Government on 16-9-2010.

[No. L-42011/30/86-D-II(B)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, JAIPUR

C. G. I. T. 68/98

None present. Perused file. An application dated 9-5-95 for the production of document is pending since long lime. There is no affidavit in support of it and secondly no one is there to support it. So on there counts it is repeated. Put up now for evidence of applicant union on 15-5-2000.

No one is present on behalf of either party. It is now 4.30 P.M. The file was fixed for recording the evidence on the issue referred by the Govt. The obligation to prove this by adducing evidence lays on these applicant union. None has appeared on behalf of it. So in these circumstances the issue referred remains not proved and following award is passed in this reference.

The action of the management of Central Cattle Breeding Farm Suratgarh and Forage Production Central Suratgarh is not regularsing 121 workmen (list at Annexure) and also not paying them minimum wages equal to regular workman is justified. They are not entitled to any relief.

Cost made easy.

Let the copy of this award be sent for Gaz. Notification & publication u/s 17 (1) of the I.D. Act to the Central Govt.

Pronounced in the open Court on 18-5-2000,

Consign the file to record room.

G. L. CHAUDHRY, Judge, Industrial Tribunal, Jaipur

नई दिल्ली, 16 सितम्बर, 2010

का.आ. 2564.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरदर्शन केन्द्र

के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-9-2010 को प्राप्त हुआ था।

[सं. एल-42012/30/89-आई आर (डीयू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th September, 2010

S.O. 2564.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Door Darshan Kendra and their workman, which was received by the Central Government on 16-9-2010.

[No. L-42012/30/89-IR (DU)]

JOHAN TOPNO, Under Secy.

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 128/89

केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली की अधिसूचना क्रमांक एल-42012/30/89/-आई. आर. (डी.यू.) दिनांक 16-11-89

छीतरमल रैगर आत्मज श्री बुद्रालाल जी निवासी चतरपुरा, पोस्ट-दांतली, थाना खान्देता जिला जयपुर ।

..... प्रार्थी

बनाम

निदेशक, दूरदर्शन केन्द्र, झालाना डूगरी, जयपुर ।

..... अप्रार्थी

उपस्थित

पीठासीन अधिकारी : श्री एस. के. बंसल, आर.एच.जे.एस.

प्रार्थी की ओर से : कोई हाजिर नहीं

अप्रार्थी की ओर से : श्री वीरेन्द्र सिंह गूर्जर

दिनांक अवार्ड : 22-11-1997

अवार्ड

यह अधिसूचना श्रम मंत्रालय नई दिल्ली द्वारा श्रम न्यायालय को निर्णय के लिए भेजी गई है जो कि निम्नलिखित है :-

"Whether the action of the management of Programme Production Centre, Jaipur is justified in terminating the services of Shri Chhitar Mal Rager w.e.f. 7-5-88? If not to what relief is the workmen entitled?"

प्रार्थी ने स्टेटमेंट ऑफ क्लेम पेश किया और उसका कथन है कि उसने प्रोडक्शन प्रोग्राम सेन्टर जयपुर में अगस्त 87 से मई 88 तक 172 दिन कार्य किया और उसकी 6-5-1988 को सेवा समाप्त कर दी और उसके पश्चात् उसे धारा 25 (एच) के अन्तर्गत सेवा का मौका नहीं दिया इसलिये उसे सवेतन सेवा में लिया जाये ।

विपक्षी ने जवाब पेश किया और उसका कथन है कि प्रार्थी का विवाद प्रोग्राम सेन्टर जयपुर के Management से है न कि विपक्षी निदेशक दूरदर्शन केन्द्र झालाना डूंगरी जयपुर से है । क्योंकि प्रोग्राम प्रोडक्शन सेन्टर महानिदेशालय आकाशवाणी के अधीन आता है । इसलिये क्लेम खारिज किया जाए ।

बहस सुनी गई । पत्रावली का अवलोकन किया गया ।

प्रार्थी ने अपना छीतरमल रैगर का शपथ पत्र पेश किया है और खंडन में वी. सी. बोस का शपथ पत्र पेश हुआ है ।

विपक्षी के विद्वान प्रतिनिधि श्री वी. एस. गुर्जर का कथन है कि अधिसूचना प्रोग्राम प्रोडक्शन सेन्टर के खिलाफ पेश की गई है जो कि दूरदर्शन का विभाग नहीं है और आकाशवाणी का विभाग है । इसलिये निदेशक दूरदर्शन केन्द्र झालाना डूंगरी के खिलाफ क्लेम खारिज किये जाने योग्य है ।

मेरे विचार में विपक्षी के विद्वान प्रतिनिधि के तर्क में काफी सार प्रतीत होता है। यह अधिसूचना व्यवस्थापक प्रोग्राम प्रोडक्शन सेन्टर के खिलाफ है । छीतरमल रैगर प्रार्थी ने भी प्रतिपरीक्षण में स्वीकार किया है कि प्रबंधक प्रोडक्शन सेन्टर टी. वी. के लिए काम करता था । इस प्रकार श्रमिक व्यवस्थापक प्रोडक्शन सेन्टर जयपुर का श्रमिक था और दूरदर्शन का श्रमिक नहीं था । इसलिये दूरदर्शन के खिलाफ कोई दादरसी पाने का अधिकारी नहीं और क्लेम खारिज किये जाने योग्य है । प्रार्थी 16-8-87 व आज उपस्थित नहीं है । इससे ऐसा प्रतीत होता है कि उसका कोई विवाद बाकी नहीं है । इसलिये विवाद रहित पंचाट जारी किया जाना उचित है ।

अवार्ड

अतः इस अधिसूचना में विवाद रहित पंचाट पारित किया जाता है । जो केन्द्र सरकार को प्रकाशनार्थ भेजा जाये ।

अवार्ड खुले न्यायालय में आज दिनांक 22-11-97 को सुनाया गया ।

एस. के. बंसल, न्यायाधीश

नई दिल्ली, 16 सितम्बर, 2010

का.आ. 2565.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एच डिवीजनल ऑफिसर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-9-2010 को प्राप्त हुआ था।

[सं. एल-40012/69/92-आई आर (डी यू)]
जोहन तोपनो, अवर सचिव

New Delhi, the 16th September, 2010

S.O. 2565.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Sub-Divisional Officer and their workman, which was received by the Central Government on 16-9-2010.

[No. L-40012/69/92-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL INDUSTRIAL TRIBUNAL, JAIPUR

Case No. C.I.T. 17/06

Ref: Government of India, Ministry of Labour, New Delhi Order No. L-40012/69/92-D-II (DU)

Shivcharan Meena S/o Shri K. D. Meena, through Jagdish Sharma, Advocate, Alwar .....Applicant

Vs.

1. Sub-Divisional Officer, Telephones, Alwar.

2. Telecom District Engineer, Alwar .....Non-applicant

Present

Presiding Offier : Shri G. L. CHAUDHRY, RHOS

For the Applicant : Shri S. P. Singh

For the Non-applicants : Shri M. R. Singhvi

Date of Award : 20th July, 2000

AWARD

1. The Central Government has referred the following industrial dispute for adjudication to this Tribunal :

> "Whether the action of the Telecom Distt. Engineer and SDO (P), Alwar in not allowing Shri Shiv Charan Meena, a daily rated workman to join his services w.e.f. 21-4-89 is justified? If not, what relief he is entitled to ?"

2. Facts. The applicant union has submitted the statement of claim alleging therein that the workman Shiv Charan was appointed as daily rated employee on 1st December, 1981 and had remained in continued employment up to 20th April, 1989. He had completed more than 240 days in every year. It was further alleged that his services were terminated w.e.f. 21st April, 1989 without any notice, notice pay and retrenchment compensation. It was also contended that he made repeated requests to the employer and also wrote letters on 12th July, 1989, 19th July, 1989, 23rd August, 1989, 22nd September, 1989 and 4th October, 1989 but all in win. The applicant union also alleged that many juniors to him are still working and many persons have taken in service after the termination of his service and another person has been taken in service in place of Shiv Charan. It was further alleged that no charge-sheet was given to him during the whole tenure of service and no domestic enquiry was held. Therefore the termination of the workman Shiv Charan was improper and illegal. It is prayed that he may be re-employed with back wages and continuity of service.

3. In the reply the non-applicant has alleged that the workman Shiv Charan was engaged as daily rated employee w.e.f. December, 1981 to March, 1989 and himself stopped the work w.e.f. April, 1989. He had been in police and judicial custody due to an offence of murder. He was released on bail. Due to this reason he did not come on work. His services were not terminated and it was not legally necessary to give any notice to him. Even a regular employee what to say of daily wages employee, cannot be considered in keeping in service who is involved in the murder case. It is wrong to say that another person was engaged in place of the workman or new hands were recruited so the reference be rejected with costs.

4. No evidence was led by either of the party.

5. Arguments heard. The learned representative for applicant union pleads no instruction.

6. The applicant union has raised the pleas based on the ground of Section 25-F, 25-G and 25-H of the I.D. Act, 1947. These facts regarding termination without notice and retrenchment compensation, taking into service new hands and keeping juniors in service require proof by way of evidence. The burden of proof was on the applicant union but inspite of repeated opportunities it failed to adduce any evidence. So these grounds are not proved. Therefore, this reference is answered in negative.

7. Now the following award is passed in this case :

(a) The action of the Telecom District Engineer and SDO (P) Alwar in not allowing Shiv Charan a daily rated workman to join his services w.e.f. 21-4-89 is justified. The applicant union is not entitled to any relief for its workman.

(b) No costs.

8. Let the award be sent to the Central Government for publication u/s 17 (1) of the I. D. Act.

9. Pronounced in the open court this the 20th day of July, 2000.

G. L. CHAUDHRY, Judge, Industrial Tribunal, Jaipur

नई दिल्ली, 16 सितम्बर, 2010

का.आ. 2566.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सब डिवीजनल ऑफिसर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-9-10 को प्राप्त हुआ था ।

[सं. एल-40012/66/89-आई आर (डी यू)]
जोहन तोपनो, अवर सचिव

New Delhi, the 16th September, 2010

S.O. 2566.— In purruaneu of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Industrial Tribunal, Jaipur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Sub-Divisional Officer and their workman, was received by the Central Government on 16-9-10.

[No. L-40012/66/89-IR (DU)]
JOHAN TOPNO, Under Secy.

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 8/1990

रैफरैन्स : भारत सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-40012/66/89-आई.आर.डी.यू. दि. 15-1-90

श्री रमेश चन्द शर्मा पुत्र श्री घमण्डी दास शर्मा गांव-गढ़ी साहदरा, पोस्ट मरहौली, तहसील-बाडी, जिला धौलपुर

—प्राथी

बनाम

सब डिवीज़नल ऑफीसर, टैलीफोन्स, सवाई माधोपुर (राज.)

—अप्रार्थी

उपस्थित

माननीय न्यायाधीश श्री जगतसिंह जी, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री बी. बी. शर्मा

अप्रार्थी की ओर से : कोई हाजिर नहीं

दिनांक अवार्ड : 9-12-1991

अवार्ड

भारत सरकार, श्रम मंत्रालय, नई दिल्ली ने अपनी उपरोक्त आज्ञा के द्वारा निम्न विवाद इस न्यायाधिकरण को वास्ते अधिनिर्णय अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947 को प्रेषित किया है:-

" Whether the action of the SDO (Telephone) Sawai Madhopur, in terminating the services of Shri Ramesh Chand Sharma S/o Shri Ghamandi Lal Sharma, daily rated workman w.e.f. 1-8-87 is justified? If not, what relief the workman is entitled to?"

2. प्रार्थी रमेश चन्द शर्मा, जिसे तत्पश्चात् श्रमिक संबोधित किया है, ने जरिये क्लेम प्रकट किया कि उसने सहायक अभियन्ता, तार दूर संचार रेल्वे विद्युतीकरण, सवाई माधोपुर के यहां दिसम्बर, 1985 से कार्य प्रारंभ किया था और 2 जून, 1986 तक लगातार कार्य किया था । 3जून, 1986 को श्रमिक को पुन: कार्य पर लगाया गया और उसके साथ समुन्द्र सिंह, सुरेश एवं मुन्ना को भी कार्य पर लगाया गया था । 31 जुलाई, 1987 तक श्रमिक ने विपक्षी के यहां लगातार कार्य किया है । । अगस्त, 1987 से विपक्षी ने उसकी छंटनी कर दी । श्रमिक का कहना है कि हालांकि 1 जनवरी, 1987 को समाप्त हुए एक कलैण्डर वर्ष में उतने विपक्षी के यहां 300 दिवस से अधिक की सेवा की थी फिर भी उसे धारा 25-एफ अधिनियम के प्रावधानों के अनुसार 1 माह का नोटिस अथवा नोटिस के एवज में एक माह का वेतन भी नहीं दिया गया और ना ही छंटनी का मुआवजा दिया गया है । सेवा समाप्ति से पूर्व विपक्षी द्वारा वरिष्ठता सूची भी नहीं बनाई गई इसलिए धारा 25-जी अधिनियम की भी अवेहलना की गई है । श्रमिक कहता है कि सेवा मुक्ति की दिनांक से वह बेरोज़गार बैठा हुआ है इसलिए सेवा मुक्ति आदेश अपास्त किया जाये और उसे 1-8-87 से सेवा में मानते हुए उक्त पद का समस्त वेतन एवं अन्य सभी लाभ दिलायें जायें ।

3. अप्रार्थी नियोजक ने जरिये प्रत्युत्तर क्लेम के उपरोक्त कथनों को अस्वीकार किया है और कहा है कि रमेश चन्द शर्मा ने तार उपमण्डल में 31-3-85 से पहले कभी कार्य नहीं किया । नियोजक के अनुसार 12 माह में श्रमिक ने 300 दिवस से अधिक कार्य नहीं किया है तथा वह स्वयं ही अपनी इच्छा से कार्य छोड़कर चला गया था । इसलिए उसका विवाद चलने योग्य नहीं है ।

4. अपने कथनों के समर्थन में श्रमिक रमेश चंद शर्मा ने स्वयं के अलावा समुन्द्रसिंह का भी शपथ पत्र पेश कर सत्यापित कराया है जिनसे नियोजक प्रतिनिधि ने जिरह की है । प्रालेखिक साक्ष्य में प्रदर्श डब्ल्यू-1 प्रमाण पत्र की फोटो प्रति पेश की गई है। इसके विपरित नियोजक की तरफ से अनेकों अवसर देने पर भी कोई साक्ष्य पेश नहीं हुई है। दिनांक 4-5-91 को नियोजक प्रतिनिधि ने प्रकट किया कि वे शहादत पेश नहीं करना चाहते । तत्पश्चात् तीन पेशियों पर नियोजक प्रतिनिधि श्री एन.सी. चौधरी उपस्थित आये थे परंतु किन्हीं कारणों से बहस नहीं हो सकी । आज नियोजक प्रतिनिधि भी उपस्थित नहीं है । मैने पत्रावली का निरीक्षण किया और श्रमिक प्रतिनिधि की बहस सुनी ।

5. अपने क्लैम के अनुसार की शपथ पत्र में भी श्रमिक कहता है उसने 3 जून, 1986 से 31 जुलाई, 1987 तक लगातर विपक्षी के

यहां सेवा की है । 1-8-87 को विपक्षी ने उसे ड्यूटी पर नहीं लिया और न ही कोई कारण बताया । प्रति-परीक्षा में भी श्रमिक उक्त कथनो की पुनरावृति करता है । श्री समुन्द्रसिंह ने भी श्रमिक के कथनों की पुष्टि में शपथ पत्र दिया है कि 3 जून, 1986 से 31 जुलाई, 1987 तक रमेश चंद शर्मा ने लगातार कार्य किया है और उसकी हाजिरी भी हर माह उन्हीं मस्टर-रोलों में हुई हैं जिनमें इस गवाह की हाजरियां हुई थी । इन दोनों साक्षियों से नियोजक प्रतिनिधि ने विस्तारपूर्वक प्रति-परीक्षा की है परंतु यह साक्षी प्रति परीक्षा की कसौटी पर खरे उतरे हैं । क्लेम की चरण सं. 10 में ही उन मस्टरोलों का नम्बर दर्ज किया गया है जिनमें इस श्रमिक की हाजरियां दर्ज थी तथा प्रदर्श डब्ल्यू-1 प्रमाण पत्र की फोटो प्रति भी प्रस्तुत की गई है जिसके द्वारा जून, 1986 से जुलाई, 1987 तक इस श्रमिक ने 351 दिवस कार्य किया था । उपरोक्त साक्ष्य के विपरीत नियोजक पक्ष की ओर से नाम मात्र की भी साक्ष्य नहीं है और यह साबित हो चुका है कि 31 जुलाई, 1987 को समाप्त हुए एक कलैण्डर वर्ष में इस श्रमिक ने 240 दिवस से अधिक सेवा पूरी कर ली थी । निर्विवाद रूप से श्रमिक को न तो छंटनी भत्ता दिया गया है, ना एक माह का नोटिस अथवा ना ही उसके एवज़ में एक माह की तन्ख्वाह दी गई है । इसलिए धारा 25-एफ के प्रावधानों के विपरीत श्रमिक की सेवा मुक्ति की गई है जो स्वत: ही अनुचित एवं अवैध हो जाती है ।

6. नियोजक ने क्लैम के प्रत्युत्तर में कहा है कि श्रमिक स्वेच्छा से कार्य छोड़कर चला गया था परंतु उक्त तथ्य बाबत नियोजक की तरफ से नाम मात्र की भी साक्ष्य नहीं आई है । श्रमिक रमेशचंद शर्मा इस विषय में कहता है कि 6-11-86 को ड्यूटी देते समय वह टेलीफोन के खम्भे से गिर गया था और चोटग्रस्त हो गया था इसलिए करीब श्रमिक 20 दिवस कार्य पर नहीं पहुंच सका । मेरी राय में उक्त दुर्घटना के उपरांत भी श्रमिक 31-7-87 तक नियोजित रहा है इसलिए जून, 1986 की तथाकथित दुर्घटना बाबत श्रमिक के 20 दिवस तक अनुपस्थित रहने से यह नहीं कहा जा सकता कि वह स्वत: ही नौकरी छोड़कर चला गया था, विशेषकर उस परिस्थिति में जब कि तत्पश्चात् 31-7-87 तक भी श्रमिक ने सेवा की है । अगर वास्तव में श्रमिक ने काम पर आना बंद कर दिया था तो यह एक दुराचरण था और नियोजक के लिए यह अपेक्षित था कि वह दुराचरण का आरोप श्रमिक पर प्रत्यारोपित कर नियमानुसार जांच करवाता और स्थाई आदेशों के अनुसार श्रमिक को उचित दण्ड देता । जिसके अभाव में नियोजक का यह कथन सत्य स्वीकार नहीं किया जा सकता कि श्रमिक स्वत: ही सेवा त्याग गया था । अत: उपरोक्त समस्त कारणों से सेवा मुक्ति आदेश दिनांक 1-8-87 अपास्त किया जाता है और इस निर्देश का अधिनिर्णय निम्न प्रकार किया जाता है :

> "श्रमिक श्री रमेश चन्द शर्मा की 1-8-87 से सेवा मुक्ति उचित एवं वैध नहीं है और उसे उक्त दिनांक से ही सेवा में पुन: नियोजित घोषित किया जाता है तथा उसे पूरा बकाया वेतन व समस्त लाभ दिलाये जाते हैं । सेवा की निरन्तरता कायम रखी जाती है । यदि नियोजक अंदर तीन माह उक्त राशि श्रमिक को अदा नहीं करेगा तो 12 प्रतिशत की वार्षिक दर से ब्याज भी देना पड़ेगा । 100 रुपये खर्चा मुकदमा भी दिलाया जाता है ।"

7. उक्त आशय का अवार्ड पारित किया जाता है जो केन्द्र सरकार को प्रकाशनार्थ अन्तर्गत धारा 17 (1) अधिनियम भेजा जावे ।

जगत सिंह, पीठासीन अधिकारी

नई दिल्ली, 16 सितम्बर, 2010

का.आ. 2567.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सब डिवीजनल ऑफिसर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या—) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-9-2010 को प्राप्त हुआ था ।

[सं. एल-40012/183/92-आई आर (डी यू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th September, 2010

S.O. 2567.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Industrial Tribunal Jaipur as shown in the Annexure, in the Industrial Dispute between the employers in the relation to the management of Sub- Divisional Officer and their workman, which was received by the Central Government on 16-9-2010.

[No. L-40012/183/92-IR (DU)]

JOHAN TOPNO, Under Secy.

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 18/93

केन्द्र सरकार, श्रम मंत्रालय नई दिल्ली की अधिसूचना नं. L-40012/183/92-IR(D.U.) दि. 15-12-93

श्री शंकर लाल जाट, सुपुत्र श्री कलाजी जाट,
गांव-ढाना, पी. ओ. बडियार, जिला उदयपुर

—प्रार्थी

बनाम

एस. डी. ओ. (टी.) (काकरौली)

—अप्रार्थी

उपस्थिति

पीठासीन अधिकारी श्री एस. के. बसंल, आर.एच.जे.एस.

प्रार्थी की ओर से : कोई हाजिर नहीं

अप्रार्थी की ओर से : कोई हाजिर नहीं

अवार्ड दिनांक : 18-11-97

अवार्ड

यह अधिसूना केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा इस न्यायालय को निर्णय के लिए भेजी गई है । जो कि निम्नलिखित है:-

" Whether the action of the SDO (T) Kankaroli, in terminating the services of Shri Shankar Lal Jat, daily rated mazdoor w.e.f. March, 1988 is justified? If not, what relief he is entitled to?"

प्रार्थी ने स्टेटमेंट आफ क्लेम पेश किया और इसका कथन है कि उसकी मई, 1985 में दैनिक वेतन भोगी के रूप में विपक्षी के यहा नियुक्ति हुई थी परंतु उसे मार्च, 88 में काम पर लेने से इंकार कर दिया और उसे कोई एक माह का वेतन व नोटिस पे नहीं दिया गया इसलिये धारा 25(f) की उल्लंघना की गई है और सेवा समाप्ति अवैध है । प्रार्थी का यह भी कथन है कि कनिष्ठ श्रमिकों को सेवारत रखा गया और बाद में उसे सेवा का अवसर नहीं दिया गया इसलिये धारा 25(जी) व एच औद्योगिक विवाद अधिनियम की उल्लंघना में सेवा समाप्त की गई है जो अवैध है और प्रार्थी को पुन: सेवा में एवंतन लिया जाये और ब्याज दिलवाया जाये।

विपक्षी ने जवाब पेश किया और उसका कथन है कि प्रार्थी ने किसी भी वर्ष 240 दिन काम नहीं किया और अन्य कथनों से भी इंकार किया है और प्रार्थी का क्लेम खारिज किये जाने की प्रार्थना की है।

पक्षकार ने कोई साक्ष्य पेश नहीं की । पत्रावली का अवलोकन किया गया । प्रार्थी यह साबित करने के लिए कि उसने 240 दिन कार्य किया और उसके कनिष्ठ श्रमिकों को सेवा में रखा और उसे सेवा का अवसर नहीं दिया गया । कोई साक्ष्य पेश नहीं की इसलिये यह सिद्ध नहीं होता कि प्रार्थी शंकर लाल ने किसी वर्ष 240 दिन कार्य किया यह भी साबित नहीं होता कि उससे कनिष्ठ श्रमिक कार्यरत रहे । यह भी साबित नहीं होता है कि उसे पुन: सेवा का अवसर नहीं दिया गया। अत: प्रार्थी श्री शंकरलाल की मार्च 88 में सेवा समाप्ति उचित व वैध है । अत: क्लेम खारिज किये जाने योग्य है ।

अवार्ड

अत: निम्नलिखित अवार्ड पारित किया जाता है । अत: एस. डी. ओ. (टी.) कांकरौली द्वारा शंकर लाल दैनिक वेतन भोगी की सेवाएं मार्च 88 से सेवा समाप्त करना उचित व वैध है । प्रार्थी कोई दादरसी पाने का अधिकारी नहीं है । यह अवार्ड केन्द्र सरकार को प्रकाशनार्थ भेजा जाये ।

अवार्ड खुले न्यायालय में आज दिनांक 18-11-97 को सुनाया गया ।

एस. के. बंसल, न्यायाधीश

नई दिल्ली, 16 सितम्बर, 2010

का.आ. 2568.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सब-डिवीजनल ऑफिसर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-9-2010 को प्राप्त हुआ था ।

[सं. एल-40012/83/89-आई आर (डीयू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th September, 2010

S.O. 2568.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Industrial Tribunal Jaipur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Sub-Divisional Officer and their workmen, which was received by the Central Government on 16-9-2010.

[No. L-40012/83/89-IR (DU)]

JOHAN TOPNO, Under Secy

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 64/90

रैफरैन्स : भारत सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-40012/83/89-आई आर(डीयू) दि. 23-8-90

श्री राम चन्द्र मार्फत भारतीय मजदूर संघ, श्रीगंगानगर

--- प्रार्थी

बनाम

एस.डी.ओ. (टी), सूरतगढ़

--- अप्रार्थी

उपस्थित

माननीय न्यायाधीश श्री के.एल. व्यास, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री जयवीर सिंह यादव

अप्रार्थी की ओर से : श्री आर. जी. गुप्ता

दिनांक अवार्ड : 29-11-1995

अवार्ड

केन्द्र सरकार द्वारा निम्न विवाद अधिनिर्णय हेतु निर्देशित किया गया है:

" Whether the action of the SDO (T) Suratgarh is justified in terminating the services of Shri Ram Chandra w.e.f. 1-7-88? If not, to what relief is the workman concerned entitled for?"

2. श्रमिक यूनियन द्वारा प्रस्तुत क्लेम में यह बताया गया है कि उसकी नियुक्ति विपक्षी एस.डी.ओ. टेलीफोन्स सुरतगढ़ द्वारा स्थाई श्रमिक के रूप में 1-6-81 को की गई थी व इस तिथि से श्रमिक ने निरन्तर 30-6-88 तक नियोजक के पास कार्य किया । बीच में कुछ समय बीमार होने के कारण वह ड्यूटी पर उपस्थित नहीं हो सका जिसके लिए चिकित्सीय प्रमाण-पत्र प्रस्तुत किया था व उस आधार पर उसे समय-समय पर पुन: ड्यूटी पर लिया गया । 30-6-88 के पश्चात् श्रमिक की सेवाएं धारा 25-एफ अधिनियम के प्रावधान की पालन किये बिना समाप्त की गई । यह भी अभिकथित किया गया है कि श्रमिक को सेवा से हटाते समय उससे कनिष्ठ कर्मचारियों को काम पर रखा गया व नये व्यक्ति भी नियोजित किये गये । सेवा मुक्ति की तिथि से निरन्तर स्वयं को बेरोज़गार होना श्रमिक ने क्लेम में बताया है । अनुतोष यह मांगा गया है कि सेवा मुक्ति की कार्यवाही को अवैध घोषित किया जाकर श्रमिक को पुन: सेवा में बहाल करने का आदेश दिया जाये व बीच की अवधि का बकाया वेतन व अन्य परिलाभ स्वीकृत किये जाये ।

3. विपक्षी के जवाब में इस तथ्य को स्वीकार किया गया है कि सर्वप्रथम श्रमिक को दैनिक वेतन पर मस्टरोल के जरिये 1-6-81 को नियोजित किया गया था । इस तथ्य को स्वीकार नहीं किया गया है कि श्रमिक को किसी स्थाई पद के विरुद्ध नियोजित किया गया था । जून 1981 से मई 1983 तक श्रमिक ने 398 दिन कार्य किया व उसके पश्चात् वह लगातार अनुपस्थित हो गया । इसके बाद दिसम्बर 1984 में वह पुन: कार्य पर आया तथा 136 दिन काम किया व बाद में फिर स्वेच्छा से अनुपस्थित हो गया । अंतिम बार वह फरवरी 1988 में काम पर आया व 1-7-88 से श्रमिक को सेवा मुक्त किया गया क्योंकि उस समय नियोजक के पास कोई कार्य नहीं था । यूनियन के इस कथन को जवाब में अस्वीकार किया गया है कि जितने समय श्रमिक अनुपस्थित रहा उस बीच क्या उसने अवकाश प्रार्थना पत्र प्रस्तुत किया था । नियोजक का कथन यह है कि श्रमिक ने स्वेच्छा से कार्य छोड़ दिया था इसलिए पूर्व को कथित सेवा मुक्ति के आधार पर वह कोई भी अनुतोष प्राप्त करने का अधिकारी नहीं है व 1-7-88 को सेवा से हटाते समय उसने 240 दिन काम नहीं किया था इसलिए धारा 25-एफ अधिनियम के प्रावधान लागू नहीं होते । यह भी अस्वीकार किया गया है कि जिस कार्य पर श्रमिक नियोजित था वहां श्रमिक की सेवा मुक्ति के समय कनिष्ठ व्यक्तियों को नौकरी पर रखा गया या उस कार्य पर अन्य व्यक्तियों को बाद में नियोजित किया गया ।

4. मौखिक साक्ष्य में श्रमिक की ओर से उसका स्वयं का शपथ पत्र प्रस्तुत किया गया है व साक्ष्य के जरिये प्रदर्श डब्ल्यू-1 से डब्ल्यू-4 प्रलेख प्रदर्शित करवाये गये हैं । खण्डन में नियोजक की ओर से एकद गवाह श्री ओ. एन. सेठ का शपथ पत्र प्रस्तुज किया गया है । बहस के समय यूनियन की ओर से कोई उपस्थित नहीं हुआ । नियोजक के विद्वान प्रतिनिधि को सुना गया ।

5. दोनों पक्षों के अभिकथनों से यह स्थिति मान्य है कि श्रमिक को नियोजक के यहां पहली बार जून 1981 में नियोजित किया गया था । यह भी मान्य स्थिति है कि 1-6-83 से नवम्बर 1984 व जुलाई 1985 से जनवरी 1988 के बीच श्रमिक ने नियोजक के यहां कार्य नहीं किया । अंतिम बार नियोजक के यहां श्रमिक ने फरवरी 1988 से 30-6-88 तक कार्य किया था । इस अवधि में उसने 126 दिन ही कार्य किया था । अभिकथनों के विरोधाभास को देखते हुए विनिश्चय हेतु यह बिन्दु उपलब्ध होता है कि क्या श्रमिक ने जिस अवधि में नियोजक के यहां कार्य नहीं किया वह अवधि अवकाश मानते हुए जून 1981 से जून 1988 तक श्रमिक को निरन्तर सेवा में माना जाये अथवा मात्र फरवरी 1988 से जून 1988 तक ही सेवा मुक्ति से पूर्व निरन्तर सेवा में रहना माना जाये ।

6. श्रमिक ने स्वयं अपने शपथ पत्र में उन तिथियों को व अवधि को स्वीकार किया है जिसमें नियोजक के अनुसार वह ड्यूटी पर नहीं था । इस संबंध में श्रमिक को साक्ष्य में प्रतिरक्षा यह है कि वह बीच की अवधि में बीमार हो गया था व इस कारण ड्यूटी पर उपस्थित नहीं हो सका । प्रदर्श डब्ल्यू-1 से डब्ल्यू-4 बीमारी के प्रमाण पत्र श्रमिक द्वारा साक्ष्य में प्रस्तुत किये गये हैं । इसके आगे उसका कथन है कि जब भी चिकित्सा प्रमाण पत्र उसने प्रस्तुत किया उसके पश्चात् उसे पुरानी सेवा के अनुसार ड्यूटी पर ले लिया गया था । प्रार्थना पत्र नियोजक के पास बीच की अवधि का अवकाश के संबंध में प्रस्तुत करना श्रमिक ने बताया है । अवकाश का प्रार्थना पत्र किस माध्यम से, किस प्रकार नियोजक को भेजा गया ऐसा श्रमिक ने नहीं बताया है । कोई प्राप्ति रसीद भी प्रस्तुत नहीं की गई है । चिकित्सा प्रमाण पत्र जो प्रस्तुत किये गये हैं उनसे यह नहीं माना जा सकता कि श्रमिक ने बीमारी के कारण अवकाश के प्रार्थना पत्र प्रस्तुत किये थे व लम्बी अवधि के अवकाश नियोजक द्वारा उसे स्वीकृत किया गया था। जिरह में श्रमिक ने स्वीकार किया है कि 1983 के पश्चात् वह पुन: ड्यूटी पर 1988 में गया था । नियोजक के गवाह श्री सेठ ने शपथ पत्र में यह बताया है कि श्रमिक 1-6-83 से 30-11-84 तक व 1-7-85 से 31-6-88 तक स्वेच्छा से अनुपस्थित रहा था व इस कारण मस्टरोल से उसका नाम काट दिया गया था। जिरह में भी उन्होंने यह कहा है कि अनुपस्थिति की अवधि का कोई भी प्रार्थना पत्र या बीमारी का प्रमाण पत्र विभाग में श्रमिक ने प्रस्तुत नहीं किया था बल्कि वह मस्टरोल पर था व नौकरी छोड़कर चला गया था । उनका यह भी कथन है कि चूंकि श्रमिक अस्थाई था व मस्टरोल पर नियोजित था इसलिए उसे नौकरी छोड़कर जाने के संबंध में भी कोई नोटिस नहीं दिया गया । दोनों पक्षों की उपलब्ध मौखिक साक्ष्य से तार्किक रूप से यह मानने का आधार नहीं है कि श्रमिक को 1-6-83 से 30-11-84 व 1-7-85 से 31-6-88 की अवधि का अवकाश स्वीकृत किया गया था या अवकाश हेतु उसने कोई भी प्रार्थना पत्र प्रस्तुत किया था । श्रमिक के व्यवहार से यह धारणा लेने का पूर्ण रूप से आधार है कि वह स्वेच्छा से समय समय पर काम छोड़कर चला गया था व पुन: आने पर उसे मस्टरोल के जरिये ड्यूटी पर ले लिया गया था । आकस्मिक मस्टरोल के जरिये नियोजित कर्मचारी को इतनी लम्बी अवधि का अवकाश देने का कोई नियम नहीं हो सकता व चूंकि विशेष कार्य के लिए आकस्मिक श्रमिकों को नियोजित किया जाता है इसलिए लम्बी अवधि को अवकाश स्वीकृत करने का भी कोई

औचित्य नहीं हो सकता । श्रकिक ने इस विवाद के प्रस्तुत करने से पूर्व कभी भी नियोजक को इस संबंध में कोई नोटिस भी नहीं दिया था। निष्कर्ष यह है कि जिस अवधि में श्रमिक ड्यूटी पर नहीं था उसके लिए यह माना जाता है कि वह स्वेच्छा से कार्य छोड़कर चला गया था व चूंकि 1-7-88 से पूर्व उसने लगातार मात्र 136 दिन कार्य किया था इसलिए धारा 25-एफ के प्रावधान लागू नहीं होते हैं । श्रमिक ने अपने शपथ पत्र में यह बताया है कि नियोजक द्वारा उससे कनिष्ठ श्रमिकों को स्थाई कर दिया गया है व इस तथ्य से धारा 25-जी अधिनियम के प्रावधान की अवहेलना सिद्ध करने का प्रयास किया गया है । यह सही है कि जिरह इस तथ्य पर श्रमिक से कोई नहीं की गई है किन्तु इसके बावजूद श्रमिक का यह कथन स्वीकार किये जाने योग्य नहीं है क्योंकि श्रमिक ने किसी ऐसे कर्मचारी का नाम क्लेम या साक्ष्य नहीं बताया है जिसे श्रमिक से कनिष्ठ होते हुए सेवा में रखा गया हो व स्थाई किया गया हो । नियोजक ने अपने जवाब में इस तथ्य को स्वीकार नहीं किया है । कोई अभिलेख नियोजक से श्रमिक ने यह तथ्य प्रमाणित करने के लिए तलब नहीं करवाया है । नियोजक के गवाह ने जिरह में यह कहा है कि उनके पास ऐसा कोई अभिलेख नहीं है जिससे यह साबित हो कि श्रमिक से कनिष्ठ व्यक्तियों को सेवा में रखा गया था । उनका यह भी कथन है कि न्यायालय के आदेशानुसार कुछ व्यक्तियों को काम पर रखा गया था । इसके अलावा कोई भी मौखिक या प्रालेखीय साक्ष्य इस संबंध में प्रस्तुत नहीं हुई है । अत: यह निश्चय किया जाता है कि श्रमिक यह प्रमाणित करने में असफल रहा है कि उसकी सेवा मुक्ति के समय नियोजक द्वारा धारा 25-जी के प्रावधान की अवहेलना की गई ।

धारा 25-एच अधिनियम के संबंध निर्देश में कोई भी उल्लेख नहीं है व इस कारण यह न्यायाधिकरण इस संबंध में कोई भी अधिनिर्णय करने के लिए सक्षम नहीं है । इसके अतिरिक्त श्रमिक ने अपने क्लेम में किसी भी ऐसे व्यक्ति का नाम नहीं बताया है जिसको उसकी सेवा मुक्ति के पश्चात् इसी कार्य के लिए नियोजित किया गया जिसपर श्रमिक नियोजित था। शपथ पत्र में श्रमिक ने इस संबंध में कोई भी तथ्य उल्लिखित नहीं किया है । अन्य कोई अभिलेख भी यह तथ्य मानने के लिए पत्रावली पर उपलब्ध नहीं हैं । ऐसी स्थिति में तथ्यात्मक रूप से भी यह सिद्ध नहीं है कि नियोजक द्वारा धारा 25-एच की अवहेलना की गई ।

8. निर्देशित विवाद का अधिनिर्णय इस प्रकार किया जाता है कि श्रमिक राम चन्द्र को एस.डी.ओ. टेलीफोन्स, सुरतगढ़ द्वारा 1-7-88 से सेवा मुक्त करने की कार्यवाही उचित व वैध है इसलिए श्रमिक कोई भी राहत प्राप्त करने का अधिकारी नहीं है ।

9. अवार्ड आज दिनांक 29-11-95 को लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जाये ।

के.एल. व्यास, न्यायाधीश

नई दिल्ली, 16 सितम्बर, 2010

का.आ. 2569.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सब-डिवीजनल ऑफिसर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-9-10 को प्राप्त हुआ था ।

[सं. एल-40011/9/89-आई आर (डी यू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th September, 2010

S.O. 2569.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Industrial Tribunal Jaipur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Sub- Divisional Officer and their workmen, which was received by the Central Government on 16-9-10.

[No. L-40011/9/89-IR (DU)]

JOHAN TOPNO, Under Secy.

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 50/90

केन्द्र सरकार श्रम मंत्रालय नई दिल्ली की आदेश क्र. एल-40011/9/89-आई.आर.(डी.यू.) दि. 27-7-90

1. लक्ष्मण सिंह पुत्र श्री रामेश्वर लाल जाति जाट निवासी कारंगा बड़ा तहसील फतेहपुर जिला सीकर ।

2. मुमताज अली पुत्र श्री अलादीन जाति कायमखानी निवासी सुनारों की ढाणी तहसील रतनगढ़ जि. चुरू ।

3. जितेन्द्र कुमार पुत्र श्री बनवारी लाल जाति शर्मा निवासी सुजानगढ़ जिला चुरू ।

4. बुधाराम पुत्र श्री राजूराम जाति जाट निवासी रघुनाथपुरा तहसील रतनगढ़ जि. चुरू ।

जरिये: जनरल सैकेट्री, टेलीफोन कर्म संघ चुरू

... प्रार्थी

बनाम

उप-मण्डल अधिकारी (तार) चुरू

... अप्रार्थी

उपस्थिति :

माननीय पीठासीन अधिकारी: श्री एस.के. बंसल, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री जे. एल. शाह

अप्रार्थी की ओर से : कोई हाजिर नहीं

अवार्ड दिनांक : 20-8-97

अवार्ड

यह अधिसूचना केन्द्र सरकार द्वारा इस न्यायालय को निर्णय के लिए भेजी गई है जो कि निम्न है :

" Whether the action of the management of S.D.O. (T) Churu is justified in terminating the services of Shri Laxman Raj, Mumtaj Ali, Jitendera Kumar, Budha Ram w.e.f. 1-5-88, 1-6-88, 1-5-88 and 1-5-88 respectively? If not what relief are the workmen concerned entitled to?"

उपरोक्त अधिसूचना का संशोधन पत्र प्राप्त हुआ है जो निम्न है:

In this Ministry's Adjudication order No.L-40011/9/89-IR(D.U.) dt. 27-7-90 refering the Industrial Dispute between the Management of Telecom Deptt. S.D.O. (T)), Churu and their workmen for adjudication to the Industrial Tribunal, Jaipur the date of termination of service of Shri Mumtajli may please be read as 30-6-87 insteed of 1-6-88 as indicated there to.

प्रार्थीगण ने स्टेटमेंट आफ क्लेम पेश किया और उनका कथन है कि श्रमिक सर्व श्री लक्ष्मण सिंह पुत्र श्री रामेश्वर लाल दिनांक 1-8-80 को व श्री मुमताज अली पुत्र श्री अलादीन दिनांक 1-7-85 को व श्री जितेन्द्र कुमार पुत्र श्री बनवारी लाल शर्मा दिनांक 1-12-81 को तथा श्री बुधाराम पुत्र श्री राजूराम दिनांक 1-9-81 को अप्रार्थी नियोजक के नियोजन में मास्टरोल कर्मचारी श्रमिक नियुक्त हुये तथा अपनी नियुक्ति तिथि से सेवा पृथक की तिथि क्रमशः 1-5-88, 1-6-87, 1-5-88 व 1-5-88 तक अप्रार्थी नियोजक के नियोजन में लगातार कार्यरत श्रमिक रहे । प्रार्थीगण का कथन है कि उनकी सेवाएं औद्योगिक विवाद अधिनियम की धारा 25(f)(g) की उल्लघंना में समाप्त की गई है जो अवैध है और प्रार्थीगण पुनः सेवा में सवतेन पाने के अधिकारी हैं ।

विपक्षी ने जवाब पेश किया और उनका कथन है कि श्रमिकों ने लगातार कार्य नहीं किया बल्कि सारी अवधि में बीच-बीच में काफी लम्बे अन्तरालों में अनुपस्थित रहकर कार्य किया और किसी भी श्रमिक ने किसी भी कलेण्डर वर्ष में 240 दिन कार्य नहीं किया । इसलिए प्रार्थीगण कोई दाहरसी पाने के अधिकारी नहीं हैं । विपक्षी का यह भी कथन है कि धारा 2(00) औद्योगिक विवाद अधिनियम जो बाद में अधिनियम कहलायेगा के अन्तर्गत कार्य पर न रखना छंटनी की परिभाषा में नहीं आता इसलिए धारा 25 (f) व (g) के प्रावधान प्रभावी नहीं हैं । इसलिए क्लेम खारिज किया जाए ।

प्रार्थीगण की ओर से केवल मुमताज अली का शपथ पत्र पेश हुआ जिस पर विपक्षी ने प्रतिपरीक्षण किया । विपक्षी ने कोई साक्ष्य पेश नहीं की ।

बहस सुनी गई । पत्रवाली का अवलोकन किया गया ।

प्रार्थी के विद्वान प्रतिनिधि श्री जे. एल. शाह इस बात को स्वीकार करते हैं कि विपक्षी संस्थान उद्योग की परिभाषा में नहीं आता इसलिए इस अधिसूचना को निरस्त किया जाए और अन्य अधिकरण से दादरसी प्राप्त कर लेगें ।

यह स्टेटमेंट आफ क्लेम उपमण्डल अधिकारी (तार) चुरू के खिलाफ पेश किया गया है जिसको प्रार्थीगण के प्रतिनिधि उद्योग नहीं मानते इसलिए विपक्षी विभाग उद्योगन होने के कारण यह अधिसूचना निरस्त किये जाने योग्य है । इस अधिसूचना का जवाब औद्योगिक विवाद अधिनियम के अन्तर्गत नहीं दिया जा सकता है ।

अवार्ड

अतः यह अवार्ड पारित किया जाता है और केन्द्र सरकार श्रम मंत्रालय द्वारा जारी अधिसूचना को निरस्त किया जाता है क्योंकि विपक्षी संस्थान उद्योग की परिभाषा में नहीं आता है। यह अवार्ड केन्द्र सरकार को प्रकाशनार्थ भेजा जावे।

अवार्ड खुले न्यायालय में आज दि. 20-8-97 को पेश हो ।

एस. के. बंसल, न्यायाधीश

नई दिल्ली, 16 सितम्बर, 2010

का.आ. 2570.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-9-10 को प्राप्त हुआ था ।

[सं. एल-40012/64/92-आई आर (डी.यू.)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th September, 2010

S.O. 2570— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Industrial Tribunal Jaipur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 16-9-10.

[No. L-40012/64/92-IR (DU)]

JOHAN TOPNO, Under Secy.

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 11/93

रैफरेंस:- केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-40012/64/92 आई. आर./(डी.यू.) दि. 21-7-93

केदारमल शर्मा पुत्र श्री मूलचंद शर्मा ग्राम हमीरपुर पोस्ट अचलपुरा तहसील चाकसू जिला जयपुर ।

प्रार्थी

बनाम

1. **महाप्रबन्धक, दूर संचार विभाग, जयपुर एक्सचेंज, एम.आई. रोड, जयपुर ।**

2. **सहायक अभियन्ता केबल्स प्रथम जयपुर द्वारा दुर्गापुरा टेलीफोन एक्सचेंज, दुर्गापुरा, जयपुर ।**

अप्रार्थी

उपस्थिति

पीठासीन अधिकारी: श्री एस. के. बंसल, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री संतोष भटनागर

अप्रार्थी की ओर से : श्री वी. एस. गुजर

दिनांक अवार्ड : 7-2-1998

अवार्ड

यह अधिसूचना केन्द्र सरकार के श्रम मंत्रालय नई दिल्ली ने निम्नलिखित विवादित बिन्दु का अधिनिर्णय करने के लिए प्रेषित की है:

> " Whether the action of the management of Telecommunication Deptt. Jaipur (G.M. Telephone Deptt. Jaipur and AEN. Cable I C/o Durgapura Telephone Exchange, Durgapura Jaipur) in terminating the services of Sh. Kedarmal Sharma daily rated workman, in justified. If not what relief he is entitled to?"

2. प्रार्थी ने स्टेटमैंट ऑफ क्लेम पेश किया और उसका कथन है कि विपक्षी कार्यालय में प्रार्थी को मजदूरों पर 1-12-81 को नियोजित किया गया था तथा उसने अपना कार्य मेहनत ईमानदारी व कठोर परिश्रम से गढढे खोदकर किया और विपक्षी ने अचानक ही दिनांक 13-12-84 को पत्र क्रमांक ई0 8/84-85/10 दिनांक 13-12-84 द्वारा उसे सूचना दी कि एक माह बाद उसकी सेवा मुक्ति कर दी जायेगी परन्तु 31-12-84 को तत्कालीन सहायक अभियन्ता श्री हरी प्रसाद गुप्ता ने मौखिक आदेश से कहा कि आप कल से कार्य पर मत आना और न ही कोई बकाया वेतन न हो क्षतिपूर्ति राशि उसे दी जबकि उसने 240 दिन से अधिक विपक्षी के यहां कार्य किया इसलिए उसकी सेवाएं धारा 25-एफ औद्योगिक विवाद अधिनियम 1947 (जो बाद में अधिनियम कहलायेगा) की उल्लघंना में समाप्त की गई है इसलिए प्रार्थी को सवेतन पुन: सेवा में लिया जाये । यह भी प्रार्थना है कि विपक्षी के पास काम की कोई कमी नहीं है और पांच माह बाद कन्हैयालाल चौधरी को रखा गया और नियम 77-78 की उल्लंघना की गई है इसलिए सेवा समाप्ति को अवैध मानते हुए प्रार्थी को पुन: सवेतन सेवा में सभी लाभों सहित लिया जाये ।

3. विपक्षी ने जवाब पेश किया और उनका कथन है कि प्रार्थी को 1-12-81 को सेवा में रखा गया था परन्तु प्रार्थी के प्राय: अनुपस्थित रहने के कारण सार्वजनिक सरकारी कार्यों में बाधा उत्पन्न होती रहती थी जिससे उसका कार्य असंतोषजनक था और प्रार्थी को 13-12-84 को प्रार्थी को एक माह का नोटिस दे दिया गया था परन्तु उसके बाद वह 1-1-85 को कार्य छोड़कर चला गया और 6 वर्ष बाद यह विवाद उठाया है और मांग अनुचित है इसलिए क्लेम खारिज किया जाये ।

4. विपक्षी का यह भी अभिकथन है कि अधिनियम के प्रावधान इस प्रकरण में लागू नहीं होते इसलिए भी प्रार्थी कोई दादरसी पाने का अधिकारी नहीं ।

5. प्रार्थी ने अपना क्लेम साबित करने के लिए अपना शपथ पत्र पेश किया है व डब्ल्यू-1 से डब्ल्यू-5 दस्तावेज़ पेश किये हैं । इसके खण्डन में विपक्षी की ओर से रामेश्वर प्रसाद गोयल का शपथ पत्र पेश किया गया है । बहस सुनी गई, पत्रावली का अवलोकन किया गया ।

6. प्रार्थी के विद्वान प्रतिनिधि श्री संतोष भटनागर का तर्क है कि प्रार्थी ने विपक्षी के यहां 1-12-81 से 31-12-84 तक लगातार कार्य किया और प्रत्येक वर्ष में 240 दिन से अधिक कार्य किया परन्तु उसकी सेवाएं बिना नोटिस, नोटिस पे व छंटनी का मुआवज़ा दिये समाप्त की गई जो कि अवैध है इसलिए प्रार्थी पुन: समस्त लाभों सहित सेवा में आने का अधिकारी है । यह भी तर्क है कि प्रार्थी को 31-12-84 को ही सेवा से हटा दिया इस प्रकार पूरे एक माह का नोटिस नहीं दिया गया इसलिए सेवा समाप्ति अवैध है अत: श्रमिक को पुन: सवेतन सेवा में लिला जाये ।

7. प्रार्थी के विद्वान प्रतिनिधि का यह भी तर्क है कि यह विभाग उद्योग की परिभाषा में आता है इसलिए अधिनियम के प्रावधान लागू होते हैं । इस तर्क के समर्थन में उन्होंने जे.टी. 1997 (9) एस.सी. 234, जनरल मैनेजर टेलीकॉम बनाम एस. श्री निवासन राव वगैरह को पेश किया है ।

8. विपक्षी के विद्वान प्रतिनिधि श्री वी.एस. गूजर का जवाब में कहना है कि प्रार्थी ने 240 दिन कार्य नहीं किया और एक माह का नोटिस देकर काम नहीं होने से सेवा समाप्त की है इसलिए सेवा समाप्ति उचित व वैध है और श्रमिक कोई दादरसी पाने का अधिकारी नहीं है जवाब में यह भी तर्क है कि यह विवाद 6 वर्ष बाद उठाया गया है इसलिए पिछला वेतन श्रमिक को नहीं दिलाया जाना चाहिये ।

9. मेरे विचार में प्रार्थी के विद्वान प्रतिनिधि के तर्कों में कुछ सार प्रतीत होता है । केदारमल शर्मा का शपथ पत्र के पैरा 1,3,4,व 6 (ख) में कथन है:

> 1. यह कि मेरे को नियोजन कार्यालय के मार्फत अप्रार्थीगण ने मजदूरी पर दिनांक 1-12-81 को नियोजित किया था तथा मैं अपना कार्य कठोर परिश्रम, लगन व ईमानदारी से कर रहा था ।
>
> 3. यह कि अप्रार्थी सं. 2 ने अचानक ही दिनांक 13-12-84 को पत्र क्रमांक ई 08/84-85/10 दिनांक 13-12-84 के द्वारा सूचना दी कि एक माह बाद आपकी सेवामुक्ति कर दी जायेगी ।

4. यह कि मेरे को दिनांक 31-12-84 को तत्कालीन सहायक अभियन्ता श्री हरी प्रसाद गुप्ता ने मौखिक आदेश द्वारा कहा कि आप कार्य पर कल से मत आना । मेरी सेवा मुक्ति के समय न तो क्षतिपूर्ति राशि ही दी गई थी और न ही बकाया वेतन ही दिया गया था ।

6. (ख) यह कि मैंने अप्रार्थीगण के अधीन सेवामुक्ति के 12 माह के अन्दर 240 दिवस से अधिक कार्य किया था परन्तु अप्रार्थीगण ने पत्र सं. ई-8/84-85:10 दिनांक 13-12-84 द्वारा मात्र यह सूचना ही दी गई थी कि अब आपकी एक माह बाद सेवाओं की आवश्यकता नहीं है परन्तु इस नोटिस के साथ न तो कोई क्षतिपूर्ति राशि के संबंध में ही उल्लेख था और न ही देने के विषय में किया गया आदेश ही था, यहीं नहीं अप्रार्थीगण ने अपने इस नोटिस का भी स्वयं में उतर नहीं दिया और प्रार्थी को दिनांक 31-12-85 के बाद काम देना बताया था जबकि अप्रार्थीगण के नोटिस के अनुसार भी प्रार्थी को दिनांक 12-1-85 तक कार्य पर रखा जाना था । अत: मेरी सेवामुक्ति औद्योगिक विवाद अधिनियम 1947 की धारा 25 एफ का उल्लघंन होने के कारण सर्वथा अवैध एवं अनुचित है ।"

10. विपक्षी द्वारा मस्टरोल की नकले पेश की गई है जिसके अनुसार प्रार्थी ने अप्रैल 84 में 23 दिन, जून 84 में 22 दिन, जून 84 में 2 दिन, जुलाई 84 में 23 दिन, अगस्त 84 में 28 दिन, सितम्बर 84 में 11 दिन, नवम्बर 84 में 27 दिन व अंतिम मस्टरोल जो कि दिसम्बर 84 की है, में 27 दिन, इस प्रकार मास्टरोलों के अनुसार प्रार्थी ने विपक्षी के यहां 163 दिन कार्य किया । मई, 84 व अक्तूबर, 84 की कोई मास्टरोल पेश नहीं की गई । इसी प्रकार जनवरी, फरवरी व मार्च 84 की कोई मस्टरोल पेश नहीं की गई । विपक्षी के साक्ष्य रामेश्वर प्रसाद का प्रति परीक्षण में कथन है कि प्रदर्श डब्ल्यू-2, 3 व 5 उनके कार्यालय के हैं । इस प्रकार ये दस्तावेज़ साबित होते हैं । प्रदर्श डब्ल्यू-4 में 1/84 में 12 दिन 2/84 में 18 दिन व 3/84 में 17 दिन श्रमिक द्वारा कार्य करना बताया गया है । मई 84 में डब्ल्यू-5 के अनुसार 21 दिन कार्य करना बताया गया है और अक्तूबर 84 में आज जो असल प्रमाण पत्र पेश किया गया है, उनके अनुसार 11 दिन कार्य करना बताया गया है । इस प्रकार जनवरी, फरवरी, मार्च , मई व अक्तूबर 1984 में प्रार्थी ने कुल 79 दिन कार्य किया । इस प्रकार 1/84 से 12/84 तक प्रार्थी ने कुल 242 दिन कार्य किया जो कि एक वर्ष में 240 दिन से अधिक हो जाता है । इस प्रकार उसने एक कलैण्डर वर्ष में विपक्षी के यहां 240 दिन से अधिक कार्य किया । विपक्षी का कहीं यह कथन नहीं है कि उसने प्रार्थी को कोई छंटनी मुआवज़ा दिया दूसरे, प्रार्थी का शपथ पत्र है कि उसे 31-12-84 को एक माह का नोटिस देकर श्री हरी प्रसाद गुप्ता ने हटा दिया परन्तु श्री हरी प्रसाद गुप्ता को पेश नहीं किया गया है इसलिए रामेश्वर प्रसाद के शपथ पत्र से प्रार्थी के शपथ पत्र का खण्डन नहीं होता और यह साबित होता है कि उसकी सेवाएं एक महीने का नोटिस देने के बाद जो कि 12-1-85 को समाप्त होंती थी जो 31-12-84 को ही समाप्त कर दी गई इस प्रकार एक माह का नोटिस नहीं दिया गया । इस प्रकार यह साबित होता है कि प्रार्थी ने पिछले वर्ष में 240 दिन से अधिक एक वर्ष में विपक्षी के यहां कार्य किया परन्तु सेवा मुक्ति से पूर्व उसे कोई नोटिस, नोटिस पे व छंटनी का मुआवज़ा नहीं दिया गया इसलिए सेवा मुक्ति धारा 25-एफ अधिनियम की उल्लघंना में सेवा समाप्त की गई है जो अवैध है और प्रार्थी पुन: सेवा में लिये जाने का अधिकारी है ।

11. रामेश्वर प्रसाद के शपथ पत्र से प्रार्थी की साक्ष्य का खण्डन नहीं होता । रामेश्वर प्रसाद के शपथ पत्र से साबित होता है कि विपक्षी विभाग बुकिंग राशि, इन्सटालेशन चार्जेज इत्यादि उपभोक्ताओं से वसूल करता है इस प्रकार व्यापारिक गतिविधियों में लिप्त होने के कारण विपक्षी संस्थान उद्योग की परिभाषा में आता है । मेरे इस विचार का समर्थन जे.टी. 1997 (एस.सी) 274 , (सुपरा) से होता है ।

12. रामेश्वर प्रसाद के शपथ पत्र से यह साबित होता है कि प्रार्थी ने यह विवाद 6 वर्ष बाद उठाया है । इसका खण्डन केदार मल शर्मा के शपथ पत्र से नहीं होता इस प्रकार यह विवाद 6 वर्ष बाद उठाया जाना साबित होता है, श्रमिक की सेवा मुक्ति 31-12-84 को की गई है जिसको 14 वर्ष हो गये हैं और ऐसा नहीं हो सकता कि 14 वर्ष तक कोई व्यक्ति बेरोज़गार बैठा रहे । इसलिए इस अर्से में प्रार्थी ने कुछ न कुछ काम तो किया ही होगा इसलिए पिछले वेतन के रूप में प्रार्थी को 5,000 रूपये की राशि दिलवाया जाना न्याय हित में उचित प्रतीत होता है ।

13. उपरोक्त विवेचन के आधार पर प्रकरण में निम्न अवार्ड पारित किया जाता है:

"टेलीकम्यूनीकेशन विभाग, जयपुर द्वारा श्रमिक केदारमल शर्मा की सेवाएं समाप्त किया जाना उचित व वैध नहीं है अत: प्रार्थी पुन: सेवा में लिये जाने का अधिकारी है । पिछले वेतन के रूप में प्रार्थी 5,000 रुपये प्राप्त करने का अधिकारी है जो विपक्षी उसे अदा करेंगे । प्रार्थी की सेवा की निरन्तरता कायम रहेगी ।"

14. अवार्ड आज दिनांक 7-2-98 को खुले न्यायालय में लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ भेजा जाये ।

एस. के. बंसल, न्यायाधीश

नई दिल्ली, 16 सितम्बर, 2010

का.आ. 2571.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-9-10 को प्राप्त हुआ था ।

[सं. एल-40012/75/90-आई आर (डी यू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th September, 2010

S.O. 2571.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Industrial Tribunal, Jaipur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Department of Post and their workman, which was received by the Central Government on 16-9-10.

[No. L-40012/75/90-IR (DU)]

JOHAN TOPNO, Under Secy.

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 12/91

रैफरेंस:- केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली की अधिसूचना नं. एल-40012/75/90 आई. आर./(डी.यू.) दि. 31-1-91

खीया लाल पुत्र श्री हीरालाल, नेहरू गेट के बाहर, गली नं. 9, मकान नं. 15, ओम नगर ब्यावर (जिला अजमेर (राज.))

—प्रार्थी

बनाम

सुपरिन्टेन्डेन्ट ऑफ पोस्ट आफिसेज ब्यावर, जिला अजमेर (राज.)

—अप्रार्थी

उपस्थिति

माननीय पीठासीन अधिकारी: श्री एस. के. बंसल, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री आर. सी. जैन

अप्रार्थी की ओर से : श्री मो. रफीक एड.

अवार्ड दिनांक : 19-8-1997

अवार्ड

यह अधिसूचना केन्द्र सरकार, श्रम मंत्रालय नई दिल्ली द्वारा इस न्यायालय को निर्णय के लिए भेजी गई है जो निम्न है:-

> " Whether the action of the management of Indian Post Offices in terminating the services of Sh. Khiylal S/o Shri Harilal, EDBPM at BPO Andheri deori Teh. Beawar (Ajmer) w.e.f. 21-3-90 is justified? If not what relief is the worker concerned entitled to?"

प्रार्थी ने स्टेटमेंट ऑफ क्लेम पेश किया कि उसकी नियुक्ति संस्थान में दिनांक 24-4-89 को ई.डी. ब्रान्च पोस्ट मास्टर के पद पर हुई थी। प्रार्थी का यह भी कथन है कि उसे 21-3-90 को अकारण सेवामुक्त कर दिया और उसे सेवामुक्त करने से पूर्व न तो कोई नोटिस दिया गया न ही नोटिस वेतन का भुगतान दिया गया इसलिए उसकी सेवाएं धारा 25 (1) औद्योगिक विवाद अधिनियम जो बाद में अधिनियम कहलायेगा कि उल्लंघना में बिना मुआवजे समाप्त की गई है जो कि अवैध हैं। प्रार्थी का यह भी प्रार्थना पत्र है कि विपक्षी संस्थान में उससे कनिष्ठ श्रमिक कार्यरत है और नये श्रमिकों को भर्ती भी किया गया है इसलिए उसकी सेवाएं धारा 25 (g) (h) अधिनियम व नियम 77 की उल्लघंना में समाप्त की गई है। इसलिए उसकी सेवा समाप्ति को अवैध मानते हुए उसे संवेतन सेवा में लिया जाए।

विपक्षी ने जवाब पेश किया और अभिकथन है कि पोस्ट एण्ड टेलीग्राफ विभाग उद्योग की परिभाषा में नहीं आता इसलिए यह अधिसूचना चलने योग्य नहीं है। विपक्षी ने प्रार्थी के अन्य कथनों से इंकार किया है और स्टेटमेंट ऑफ क्लेम खारिज किये जाने की प्रार्थना की है।

पक्षकारान ने कोई मौखिक साक्ष्य पेश नहीं की।

बहस सुनी गई। पत्रावली का अवलोकन किया गया।

विपक्षी ने यह एतराज उठाया है कि पोस्टल एण्ड टेलीग्राफ विभाग उद्योग की परिभाषा में नहीं आता इसलिए यह अधिसूचना बिना अधिकारिता होने से निरस्त किये जाने योग्य है।

प्रार्थी के विद्धान प्रतिनिधि इस बात को स्वीकार करते हैं कि पोस्टल व टेलीग्राफ विभाग उद्योग की परिभाषा में नहीं आता परन्तु उन्हें यह विवाद केन्द्रीय प्रशासनिक अधिकरण में उठाने की इजाजत दी जावे। यह भी स्वीकार करते हैं कि यह अधिसूचना चलने योग्य नहीं है।

मेरे विचार में पोस्टल एण्ड टेलीग्राफ विभाग उद्योग की परिभाषा में नहीं आता यह बात प्रार्थी के प्रतिनिधि भी यह स्वीकार करते है और विपक्षी को यह एतराज हैं। अत: पोस्टल एण्ड टेलीग्राफ विभाग की परिभाषा में नहीं आता इसलिए यह अधिसूचना चलने योग्य नहीं है। इसलिए निरस्त की जाती है। इसको वापस भेजा जाना उचित है।

आदेश

अत: भारतीय पोस्टल एण्ड टेलीग्राफ विभाग उद्योग की परिभाषा में नहीं आता इसलिए यह अधिसूचना भारत के श्रम मंत्रालय द्वारा गलत प्रेषित की गई है। अत: अधिसूचना गलत प्रेषित करने के कारण इसका निर्णय किया जाना उचित नहीं और अधिसूचना निरस्त की जाती है। भारत सरकार को यह आदेश उचित कार्यवाही के लिए भेजा जावे।

आदेश खुले न्यायालय में दिनांक 19-8-97 को सुनाया गया।

एस. के. बंसल, न्यायाधीश

नई दिल्ली, 16 सितम्बर, 2010

का.आ. 2572.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पी.जी.आई. एम.ई.आर. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. II, चन्डीगढ़ के पंचाट (संदर्भ संख्या 1545/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-9-2010 को प्राप्त हुआ था।

[सं. एल-42012/14/2008-आईआर (डी.यू.)]
जोहन तोपनो, अवर सचिव

New Delhi, the 16th September, 2010

S.O. 2572.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1545/2008) of the Central Government Industrial Tribunal-cum-Labour Court, No.II, Chandigarh now as shown in the Annexure in the Industriai Dispute between the employers in relation to the management of P.G.I.M.E.R. and their workmen, which was received by the Central Government on 16-9-2010.

[No. L-42012/14/2008-IR (D.U.)]

JOHAN TOPNO, Under Secy.

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT : Sri A. K. Rastogi, Presiding Officer.

Case No. I.D. 1545/2K8
Instituted on 20-06-2008

Shri Rajesh Kumar Bansal, H. No. 283/1, Street No. 6, New Janta Nagar, ATI Road, Opposite Arora Cinema, Near Ram Video, Ludhiana.

....Applicant

Versus

1. The Director, P.G.I.M.E.R., Sector 12, Chandigarh.

2. M/s. A.N. Kapoor (Janitors) Pvt. Ltd., P.G.I.M.E.R. Room No. 38, Nehru Sarai, Chandigarh.

...Respondents

APPEARANCES

For the Workman : Sh. Dinesh Chaudhary & A.C. Bhatnagar, A. Rs

For the Management: Sh. Yogesh Putney, Adv.

AWARD

Passed on 29th July, 2010

Government of India vide notification No. L-42012/14/2008-IR (DU), dated 2-06-2008 by exercising its powers under Section 10 sub-section (1) (d) and sub-section (2A) of the Industrial Disputes Act, 1947 (hereinafter referred as the Act) has referred the following Industrial dispute for adjudication to this Tribunal :-

> " Whether the contract between the management of P.G.I.M.E.R. Chandigarh, the principal employer and their contractor M/s. A.N. Kapoor (Janitors) Pvt. Ltd. with regard to employment of their workman Shri Rajesh Kumar Bansal is sham and bogus? If yes, whether the action of the principal employer, in terminating the services of the said workman w.e.f. April, 2005, is legal and justified ? If not to what relief the workman is entitled ?"

The case of the claimant is that he was employed as Sanitary Jamadar in PGI, Chandigarh as requisitioned by the PGI from Om Security and Cleaning Services i.e. respondent no. 1 on 16-07-2002 and continued till April, 2005 when he was told by the joint Medical Superintendent that his services are no more required. This was also affirmed by respondent no. 3 i.e. PGI, Chandigarh through its Director. PGI authorities had the full control and command during the performance of the duties of the workman.

The claim statement has been filed against Om Security and Cleaning Services and PGIMER and its Director and it has been stated in the claim statement that in the order of reference M/s. A. N. Kapoor (Janitors) Pvt.Ltd., Room No. 38, Nehru Sarai, PGIMER, Chandigarh is the immediate employer, whereas no demand notice was served upon Om Security and Cleaning Services as they were the immediate employer and the relief was claimed against them and respondent no. 3 and 4 i.e. PGIMER and Director PGIMER. The claimant alleged that his termination is in violation of various provisions of the I.D. Act, 1947.

A short written statement filed by PGIMER and the Director centers only on one point that the claim petition filed is against Om Security and Cleaning Services and the other respondents. The workman was not covered and his services were not regulated under the contract entered between PGI with the said M/s. A.N. Kapoor (Janitors) Pvt. Ltd., and the said contract cannot be called as sham contract. This court has no jurisdiction to change or alter the reference or its term by impleading Om Security and Cleaning Services. The nature and scope of the reference also cannot be changed. The reference in its present form is incompetent, bad in law and not maintainable. No Industrial Dispute exists between the workman and the answering respondent i.e. PGIMER and its Director.

It was requested that the validity and maintainability of the reference may be decided as a preliminary issue.

On the basis of the pleadings, a preliminary point about the validity and maintainability of the references arises.

I have heard the parties.

Learned Counsels for the parties agree in unison that the reference in the present form is not competent as in the reference a contract between the management of PGIMER Chandigarh and their contractor M/s. A.N. Kapoor (Janitors) Pvt. Ltd., with reference to the employment of the workman/claimant has been questioned, while the workman, has not challenged any such contract. His immediate employer was not the contractor A.N. Kapoor (Janitors) Pvt. Ltd., but Om Security and Cleaning Services. The contract between the management of PGIMER and Om Security and Cleaning Services is beyond the purview of the reference and the grievances of the workman/claimant cannot be addressed to in this reference.

I find myself in agreement with the counsel for the parties. The Industrial dispute raised by the claimant/ workman is against the Om Security and Cleaning Services and the management of PGIMER Chandigarh and not against the contractor M/s. A.N. Kapoor (Janitors) Pvt. Ltd. A contract between the management of PGIMER, Chandigarh and Contractor A.N. Kapoor (Janitors) Pvt. Ltd., with regard to the employment of the workman Rajesh Kumar Bansal is or is not sham and bogus cannot be decided in this reference. The reference is answered accordingly. Let two copies of the award be sent to the Central Government for further necessary action and record be consigned after due compliance.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 16 सितम्बर, 2010

का.आ. 2573.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गैरीसन इंजीनियर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या.....) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-9-2010 को प्राप्त हुआ था।

[सं. एल-14012/25/89-डी-2(बी)]
जोहन तोपनो, अवर सचिव

New Delhi, the 16th September, 2010

S.O. 2573. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Industrial Tribunal Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Garrison Engineer and their workmen, which was received by the Central Government on 16-9-2010.

[No. L-14012/25/89-D-II(B)]
JOHAN TOPNO, Under Secy.

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी. आई. टी. 119/89

रैफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली को आदेश क्रमांक एल. 14012/25/88-डी-2(बी) दि. 3-8-89

प्रेम कुमार द्वारा श्री राजाराम भार्गव, महामंत्री
एवं लघु उद्योग श्रमिक संघ 12/443, मालवीय नगर, जयपुर

--- प्रार्थी

बनाम

प्रबन्धक, गेरीसन इंजीनियर, एम.ई.एस. ग्राम पोस्ट
लालगढ़ जाटव, तहसील सादुल शहर, जिला श्री गंगानगर

--- अप्रार्थी

उपस्थित

माननीय न्यायाधीश श्री के. एल. व्यास, आर. एच. जे. एस.

प्रार्थी की ओर से	:	श्री राजा राम भार्गव
अप्रार्थी की ओर से	:	श्री अमिताभ मजूमदार
दिनांक अवार्ड	:	7-10-1995

अवार्ड

केन्द्र सरकार द्वारा निम्न विवाद अधिनिर्णय हेतु निर्देशित किया गया है :

"Whether the action of the management of Garison Engineer, MES Sriganganagar is justified in terminating the services of Shri Prem Kumar as a daily rated mazdoor w.e.f. 10-6-87 ? If not, to what relief is the workman entitled ?"

2. श्रमिक द्वारा प्रस्तुत क्लेम के तथ्य इस प्रकार हैं कि उसने विपक्षी संस्थान में 25-8-86 से 10-6-87 तक दैनिक वेतन पर कार्य किया था व इस अवधि में उसके कुल कार्य दिवस 247 हुए थे। इसके बावजूद नियोजक द्वारा श्रमिक की सेवाएं धारा 25-एफ व जी जो औद्योगिक विवाद अधिनियम की पालना किये बिना समाप्त की गई। अवैद्य सेवा मुक्ति से संबंध में श्रमिक ने अपना विवाद समझौता अधिकारी के समक्ष प्रस्तुत किया था व असफल वार्ता के पश्चात् यह विवाद राज्य सरकार द्वारा निर्देशित किया गया। अनुतोष क्लेम में यह मांगा गया है कि श्रमिक को निरन्तर सेवा में मानते हुए पुनः बहाली का आदेश दिया जाये व बीच की अवधि का समस्त बकाया वेतन स्वीकृत किया जाये।

3. नियोजक ने जवाब में यह स्वीकार किया है कि श्रमिक ने उनके यहां कुछ अवधि तक कार्य किया था किन्तु 247 दिन कार्य

करने के तथ्य को अस्वीकार करते हुए यह बताया है कि श्रमिक ने मात्र 87 दिन उनके यहां दैनिक वेतन पर अस्थाई रूप से कार्य किया था। प्रत्येक माह में श्रमिक द्वारा किये गये कार्य के दिवसों का विवरण भी जवाब में दिया गया है। इन तथ्यों के आधार पर यह प्रतिरक्षा ली गई है श्रमिक की सेवा मुक्ति के मामले में औद्योगिक विवाद अधिनियम के प्रावधान किसी भी रूप में लागू नहीं होते है। प्रतिरक्षा यह ली गई है कि नियोजक द्वारा किसी भी प्रक्रम पर श्रमिक को सेवा से नहीं हटाया गया व न ही उसके पश्चात् किसी व्यक्ति को दैनिक वेतन पर नियोजित किया गया। नियोजक की ओर से श्रमिक को समय समय पर मस्टरोल के जरिये किये गये भुगतान के प्रलेख की फोटो प्रतियां प्रस्तुत की गई हैं।

4. श्रमिक की ओर से अपने कथन के समर्थन में उसके स्वयं के अलावा एक अन्य गवाह श्री राम कुमार का शपथ पत्र प्रस्तुत किया गया है। शपथ पत्र प्रस्तुत करने के पश्चात् दोनों गवाहान में से कोई भी जिरह हेतु न्यायाधिकरण के समक्ष उपस्थित नहीं हुआ व परिणामस्वरूप उनकी साक्ष्य विधिक रूप से विवाद के संबंध में ग्राह्य नहीं है व इस कारण जो भी तथ्य दोनों गवाहान के शपथपत्र में बताये गये हैं उनपर विचार किया जाना संभव नहीं है। इसके अलावा भी जो दो प्रलेख श्रमिक की ओर से प्रस्तुत किये गये हैं वे नियोजक पक्ष ने स्वीकार नहीं किये हैं व जिरह के अभाव में इन प्रलेख को साबित नहीं माना जा सकता तथा यदि तर्क के लिए उनपर विचार किया जावे तो भी उससे श्रमिक के कथन को समर्थन नहीं होता है। एक प्रलेख असफल वार्ता का प्रतिवेदन है व दूसरा श्रमिक द्वारा नियोजक के यहां अगस्त 1986 से जून 1987 के बीच कार्य करने का प्रमाण पत्र है किन्तु इस प्रमाण पत्र में यह उल्लेख नहीं है कि श्रमिक ने कुल कितने दिन तक कार्य किया था। श्रमिक ने जो क्लेम प्रस्तुत किया है उसमें धारा 25-जी की अवहेलना के संबंध में कहीं भी यह नहीं बताया गया है कि उसकी कथित सेवा मुक्ति के समय कौन कनिष्ठ कर्मचारी नियोजक द्वारा सेवा में रखा गया था। इस प्रकार धारा 25-जी के प्रावधान की अवहेलना का तथ्य क्लेम व प्रस्तुत साक्ष्य से भी साबित नहीं होता है। निष्कर्ष यह है कि श्रमिक द्वारा अपने क्लेम के समर्थन में कोई भी विधिक साक्ष्य प्रस्तुत नहीं करने से यह प्रमाणित मानने का आधार नहीं है कि उसने 247 दिन नियोजक के यहां कार्य किया था व नियोजक द्वारा धारा 25-एफ के प्रावधान की अनुपालना के बिना उसे सेवा से हटाया गया। नियोजक की ओर से इस परिस्थिति को देखते हुए कोई भी साक्ष्य प्रस्तुत नहीं की गई है व इसकी कोई आवश्यकता भी नहीं है उपलब्ध साक्ष्य व अभिकथनों के आधार पर श्रमिक को क्लेम प्रमाणित नहीं होता है व परिणाम स्वरूप वह कोई भी अनुतोष प्राप्त करने का अधिकारी नहीं है।

5. निर्देशित विवाद का अधिनिर्णय इस प्रकार किया जाता है कि नियोजक गेरीसन इंजीनियर श्रीगंगानगर द्वारा श्रमिक प्रेम कुमार को दिनांक 10-6-87 को सेवा मुक्त करने की कार्यवाही अनुचित व अवैध नहीं है व परिणामस्वरूप श्रमिक कोई भी अनुतोष प्राप्त करने का अधिकारी नहीं है।

6. अवार्ड आज दिनांक 7-10-95 को लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

के. एल. व्यास, न्यायाधीश

नई दिल्ली, 17 सितम्बर, 2010

का.आ. 2574.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ बडौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, श्रम न्यायालय -1, नई दिल्ली के पंचाट (संदर्भ संख्या 48/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-9-2010 को प्राप्त हुआ था।

[सं. एल-12011/123/04-आईआर (बी-II)]
पुष्पेन्दर कुमार, डेस्क अधिकारी

New Delhi, the 17th September, 2010

S.O. 2574.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.48/2004) of the Central Government Industrial Tribunal/ Labour Court -1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 17-9-2010.

[No. L-12011/123/04-IR (B-II)]
PUSHPENDER KUMAR, Desk Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI.

I. D. No. 48/2004

The President,
Bank of Baroda Employees Union (NZ)
Bank of Baroda, Nehru Ground,
Faridabad.

..... Workman

Versus

The General Manager,
Bank of Baroda,
Regional office, 16, Parliament Street,
Delhi Metro -II
New Delhi -110001

..... Management

AWARD

A sub-staff joined service with the Bank of Baroda on 23rd of March, 1966. On 15th of September, 1982 he seeks permission to appear in Matriculation examination, to be conducted by Board of School Education, Himachal Pradesh. On 10-1-1983 he furnished a mark sheet to bank authorities purporting to have passed matriculation examination conducted by the aforesaid Board. On the basis of the mark sheet so furnished, he was promoted to clerical cadre w.e.f. 1st of September, 1984. Later on it revealed that when permission to appear in matriculation examination, to be conducted by Board of School Education, Himachal Pradesh, was sought by that time the employee had already appeared in the said examination. It also came to light that mark sheet submitted by him bearing roll No. 65914, purported to have been issued by Board of School Education, Himachal Pradesh, was fake and he could not qualify the matriculation examination and secured promotion by presenting fake document and on misrepresentation of facts. A charge sheet dated 14-3-2000 was served. An Enquiry Officer was appointed. Before the Enquiry Officer the employee admitted his charges. Notice of proposed punishment was also served and the Disciplinary Authority gave personal hearing to the employee. Before the Disciplinary Authority too he admitted his charges. Vide order dated 22nd of November, 2000 punishment of bringing him down to a lower stage in the scale of pay upto a maximum of two stages with cumulative effect for misconduct of misleading the bank in order to have undue gain, bringing him down to a lower stage in the scale of pay upto a maxima of two stages with cumulative effect for misconduct of showing lack of integrity and honesty and punishment of bringing him down to a lower stage in the scale of pay upto the maxima for one stage with cumulative effect for misconduct of commission of acts unbecoming of a bank employee, besides warnings for commission of acts prejudicial to the interest of the bank were awarded to him. On 29th of October, 2001 he was reverted to sub staff cadre, since he was ineligible for promotion to clerical cadre, to which he was promoted on the basis of fake certificate, as detailed above. An industrial dispute was raised by Bank of Baroda Employees Union before the Conciliation Officer. Conciliation proceedings failed. Conciliation Officer submitted his failure report to the appropriate Government, which in turn referred the dispute to this Tribunal for adjudication, vide Order No. L-12011/123/04-IR (B-II). New Delhi, dated 29-09-2004 with following terms of reference :

"Whether the action of the management of Bank of Baroda in imposing the punishment of reduction in basic pay by 5 stages and reversion from Clerical Cadre to Sub-staff cadre on Shri Badloo Ram is justified and legal ? If not, what relief the workman is entitled to ?"

2. Claim statement was filed on behalf of the claimant pleading therein that Shri Badloo Ram joined services with bank of Baroda as peon on 23-3-1966. He has a good record of his service, hence annual increments were granted to him . He was allowed to appear in matriculation examination to be conducted by Board of School Education, Himachal Pradesh, in September, 1982. He appeared in the examination and passed it. He was promoted as accounts cum cash clerk vide letter dated 22-9-84 w.e.f. 1st of September, 1984. On account of union activities, the bank authorities got inked and became prejudiced qua the claimant. As such charge sheet dated 14-3-2000 was issued, which replied by him. Before the Enquiry Officer he admitted the charges under force and coercion. No enquiry was conducted against him. Punishment of reduction of pay by six stages was proposed, against which he made representation. On 14th of November, 2000 punishment by way of reduction of pay by five stages was awarded to him. He was also reverted to sub-staff cadre. Thus punishment awarded to him was duel punishment, which is not sustainable in the eyes of law.Since he has rendered 12 years of continuous service, hence he was entitled to be promoted to clerical cadre.He made representation against the punishment but the bank had not considered his representation favourably. He claims that excessive punishment was awarded to him which is not sustainable in the eyes of law. He seeks that punishment awarded to him may be declared illegal and set aside and his pay may be restored to the position where it would have been with all consequential benefits.

3. Bank resisted the claim pleading that false facts were presented by and on behalf of the claimant. On 15th of September, 82, he moved an application seeking permission to appear in matriculation examination to be conducted by Board of School Education, Himachal Pradesh, in October that year. However, he has already appeared in that examination on September itself. On 10-1-83 he presented a fake marksheet bearing Roll No. 65910 purporting to have been issued by the aforesaid Board, in which examination he successfully qualified. On the basis of the said fake mark sheet he was promoted to clerical cadre w.e.f. 1st of September, 84. When true facts came to light, charge sheet dated 14-1-2000 was served upon him. An Enquiry Officer was appointed. The claimant voluntarily admitted the charges before the Enquiry Officer on 16-6-2000. Enquiry Officer submitted his report and Disciplinary Authority served a notice of proposed punishment. Disciplinary Authority gave him personal hearing and on 14-11-2000 he again admitted the charges before the Disciplinary Authority. Punishment of reduction of pay by five stages with cumulative effect, besides warnings was awarded to him vide order dated 22-11-2000. Since the claimant was only 7th standard pass he was not entitled to promotion to clerical cadre, hence he was reverted to sub-staff cadre. His reversion to sub staff cadre

does not constitute punishment, since being ineligible for promotion he was bound to be reverted. It is denied that the bank authorities became prejudicial qua the claimant, on his joining Bank of Baroda Employees Union. Claim put for ward on or on behalf of the claimant is devoid of merits and it may be dismissed, pleads the bank.

4. Claimant has examined himself (WW1) and Shri Amrit Lal (WW2) in support of his claim. Shri A. Shankar Narainan, Chief Manager, was examined on behalf of the bank. No other witness was examined by either of the parties.

5. Arguments were heard at the bar. Shri B. K. Paul, authorised representative, advanced arguments on behalf of the claimant. Shri B. S. Chauhan, authorised representative, raised his submissions on behalf of the management. Written submissions were also filed on behalf of the bank. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :

6. Claimant swears in his affidavit Ex. WW1/A that he joined Bank of Baroda at its Gurgaon branch on 23rd of March, 1996 as a Peon. He was promoted as accounts-cum-cash clerk on 1st of September, 84, which promotion was due to him, since he had rendered 12years of continuous service as per promotion policy. A charge sheet was served upon him on 14-3-2000, which was based on wrong facts.Enquiry Officer coerced and forced him to sign a letter on 16th of June, 2000. No enquiry was conducted by him thereafter. The Disciplinary Authority imposed punishmnet of reversion aswell as reduction of his salary by five stages with cumulative effect. The punishment so awarded was improper, wrong, malafide and illegal. His reversion order was punitive and liable to be set aside. During the course of his cross examination, he concedes that notice dated 14-3-2006, copy of which is Ex. WW1/M1, was receive by him. Shri I. R. Goel was appointed as Enquiry Office, vide order Ex.WW1/M3. Shri D. K. Chibber was appointed as Presiding Officer, vide order Ex. WW1/2M. He participated in the enquiry proceedings. Sant Lal was his defence representative in that enquiry. He does not dispute the copy of the enquiry proceedings, which are Ex. Ex. WW1/M4 and Ex. WW1/M5. He admits that letter Ex. WW1/M6 was written by him. Ex.WW1/M7 is the copy of the mark sheet, on the basis of which he was promoted to clerical cadre. He had given original of Ex.WW1/M7 to the bank which has not been returned yet. enquiry report Ex.WW1/M8 was submitted by Shri I. R. Goel to the Disciplinary Authority. He was called by the Disciplinary Authority at his Karnal Office to present his point of view on proposed punishment. He admits that charges were admitted by him before the Disciplinary Authority vide proceedings Ex.WW1/M10. Punishment was awarded to him, vide order Ex.WW1/M11. He projects that letter Ex.WW1/M6 was written by him under coercion by the bank authorities.

7. Shri Amrit Lal deposed that he was general secretary of Bank of Baroda Union, North Zone Jalandhar, while in service of the bank. He has been superannuated on 31-10-09 After his superannuation, he is still serving the aforesaid union as its General Secretary. Claimant was the member of the said union. He was charge sheeted by the bank on 14-3-2000. He participated in the enquiry proceedings as his defence representative on 31-5-2000 at Karnal. At that date Badloo Ram denied the charges . 12 documents were supplied to him. Enquiry proceedings were adjourned to 16-6-2000. He participated in the enquiry proceedings alongwith the workman on 16-6-2000 also. The Enquiry officer persuaded the workman to admit the charges, with an assurance that a lenient view would be taken against him. He tried to persuade Badloo Ram not to concede the charges but he was under the influence of the management.Badloo Ram gave letter Ex.WW1/M6 to the Enquiry Officer. Baldoo Ram signed that document in his presence. Proceedings Ex.WW1/M5 were recorded on that date. Phool Chand and Partap Singh were also 8th standard pass. Badloo Ram was also 8th standard pass. Badloo Ram submitted a certificate of matriculation. An enquiry was also conducted against Phool Chand and Partap Singh since they also submitted certificate of matriculation issued by Board of School Education, Himachal Pradesh. They were also charge sheeted and enquiry were conducted against them. Punishment of stoppage of five increments were awarded to them, while Badloo Ram was reverted to sub staff cadre also. Partap Singh was not reverted to sub staff cadre. Phool Chand was reverted to sub-staff cadre but on their persuation punishment was changed. Punishment awarded to Badloo Ram was servere and in violation of clause 19.6 and 19.9 of Bipartite Settlement of 1966. During the course of his cross examination, he concedes that in proceedings Ex.WW1/M5, it was not mentioned that Badloo Ram gave Ex.WW1/M6 to the Enquiry Officer under his influence. He concedes that those enquiry proceedings were signed by him on 16-6-2000, when he attended those proceedings.

8. Shri A. Shankarnarainan swears in his affidavit Ex.MW1/A that on the basis of fabricated mark sheet, sumitted by Badloo Ram, he was promoted to clerical cadre on 1-9-84. Charge sheet was served upon Badloo Ram when facts came to light that mark sheet submitted by him was not genuine. Enquiry was conducted against him in free and fair manner and the Disciplinary Authority gave notice of proposed punishment to Badloo Ram. During the course of personal hearing, Badloo Ram requested for leniency in punishment and punishment of reduction of his pay by five stages in the scale pay with cumulative effect was awarded to him, vide order dated 22-11-2000. Since he cured promotion on the basis of fake mark sheet, he was liable to be reverted to sub-staff cadre, after serving

a show cause noticein that regard, he was reverted to sub-staff cadre. During the course of his cross examination he concedes that after 12 years of service a sub staff is eligible for promotion to cierical cadre, which promotion is not automatic. The claimant sought promotion to appear in matriculation examination, to be conducted by Board of School Education, Himachal Pradesh, by way of suppression of facts. He appeared in the examination first and sought promotion later on. He has admitted during the course of enquiry that mark sheet submitted by him was fake. There was no necessity for the Enquiry Officer to summon anyone from the Board of School Education, Himachal Pradesh.

9. On appreciation of facts testified by rival parties, it came to light that charge sheet Ex.WW1/M1 was served on the claimant and thereafter an enquiry was instituted against him. He participated in the enquiry proceedings alongwith Amrit Lal, his defence representative. Amrit Lal concedes that enquiry proceedings Ex.WW1/M4 and Ex.WW1/M5 were recorded in his presence, which proceedings were signed by him. Proceedings Ex.WW1/M4 was recorded on 31-5-2000. On that date the claimant was called upon to admit or deny the contents of the charge sheet dated 4-3-2000. He denied the contents of the charge sheet. Documents were supplied to him and thereafter proceedings were adjourned to 16-6-2000. Proceedings Ex.WW1/M4 bear signatures of the claimant, his defence representative, presenting officer and the Enquiry Officer. On 16-6-2000 the claimant appeared before the Enquiry Officer alongwith his defence representative and proceedings Ex.WW1/M5 were recorded. In proceedings Ex.WW1/M5 it has been recorded that a letter of the date was presented by the claimant before the Enquiry Officer admitting the charges levelled against him and requested that the matter may be considered under clause 19.12 (e). He was advised that as per bank's procedure the case can not be considered under clause 19.12 (e) after issue of a charge sheet. But he requested that his request may be forwarded to the Disciplinary Authority alongwith the enquiry report, to take a lenient view in the matter. These proceedings were recorded in his own hand by the Enquiry Officer in presence of the claimant, his authorised representative and the presenting officer. The claimant and his authorised representative had signed the aforesaid proceedings, without recording any fact contrary to those mentioned therein. Therefore, it is emerging over the record that proceedings Ex.WW1/M5 were correctly recorded by the Enquiry Officer on 16-6-2000, which were so admitted by the claimant and his defence representative. The defence representative, who was General Secretary of Bank of Baroda Employees Union has not raised his eye brows against the proceedings referred above. It is not case of the claimant that he ever questioned genuineness of those proceedings. Shri Amrit Lal had also not projected that the proceedings were wrongly recorded and he raised his voice about its genuineness at any point of time. Therefore, genuineness of proceedings Ex.WW1/M5 has been established beyond doubt. Out of proceedings Ex.WW1/M5 it crystalises that the claimant submitted letter dated 16-6-2000 before the Enquiry Officer admitting all the charges levelled against him.

10. Letter dated 16-6-2000 has been proved as Ex.WW1/M6. Claimant admits that this letter ears his signatures and it was sbmitted by him to the Enquiry Officer. When Ex.WW1/M6 is scanned, it emerge over the record that the claimant admitted charges levelled against him. In letter Ex.WW1/M6 he regretted for the acts detailed in the charge sheet. He requested to treat his case under clause 19.12 (e) of Bipartite Settlement 1966. He projected that he was appointed by the bank on 3-4-66 and served the institution with utmost devotion, loyalty and sincerity. There was nothing against him in past record of his service. No financial loss was caused to the bank. He requested that a lenient view may be taken, in view of the facts narrated above. Ex.WW1/M6 makes it clear that it was an admission of the charges whole heartedly. The claimant made his breast clean and requested the authorities for leniency in the matter.

11. A hue and cry has been made on behalf of the claimant agitating that he was persuaded to sign Ex.WW1/M6. Shri Amrit Lal projects a story that Ex.WW1/M6 was signed by the claimant under influence of the Enquiry Officer.Claimant projects in his affidavit Ex.WW1/A that the aforesaid letter was written by him under coercion and force exerted by the Enquiry Officer. However, no such stand was taken either by the claimant or by Amrit Lal when they signed proceedings Ex.WW1/M5 or thereafter the claimant appeared before the Disciplinary Authority on 14-11-2000. At that time too, he had not raised any eye brow on Ex.WW1/M5 or Ex.WW1/M6. Till that time General Secretary of the union had not questioned factum of admission made by the claimant before the Enquiry Officer.Therefore, allegation of coercion and force, being exerted on the claimant, or influence being exercised on him by the Enquiry Officer are nothing but an after-thought. There is no substance in the allegations, so levelled. It is obvious that the claimant made admission of his guilt before the Enquiry Officer of his own.

12. There is other face of the coin. When claimant was heard by the Disciplinary Authority in person, on proposed punishmnet on 14-11-2000, he made admission of his guilt before the Disciplinary Authority also.Proceedings Ex.WW1/M10 were recorded, which were signed by the Disciplinary Authority as well as the claimant. When Ex.WW1/M10 is perused, it became evident that the Disciplinary Authority recorded that all the charges were admitted by the claimant before him and the claimnat pleaded for leniency in punishment. Contents of Ex.WW1/M10 has not been disputed. Consequently this document

gives support to the fact that the claimant admitted charges voluntarily before the Enquiry Officer.

13. When claimant admitted charges levelled against him and made an unconditional and unqualified confession then nothing was to be done by way of an enquiry and it cannot be argued that proceedings of the departmental enquiry should have been continued notwithstanding such admission or confession. When a worker, called for enquiry, admits charges and his union representative is also present who does not dispute that fact, then he cannot later on complain to say that there was no enquiry against him. When there is an admission of guilt, in an unconditional and unqualified manner, conduct of an enquiry would be empty formality. Law to this effect was laid in J.L. Toppo (AIR 1963 Patna 177), Firestone Tyre and Rubber Co. of India Ltd. [1967 (II) LLJ 715], Central Bank of India Ltd. [1967 (II) LLJ 739] and Rabindra Mohan (AIR 1961 Tripura 1).

14. When admission made by an employee shows that he had committed misconduct then question of violation of principles of natural justice cannot have any relevance. If a misconduct is admitted then this isante-thesis to violation of principles of natural justice or victimzation. If the workman admits his guilt before the Enquiry Officer; there is no obligation on the management to lead evidence on merits because that would be empty formality and in such cases there cannot be violation of principles of natural justice. An explanation need he called from an employee and enquiry necessitated only when a charge is denied and the employee wants to put up a defence in support of his case. In case of admission of guilt by the employee, formality of enquiry stands obviated. Law to this effect was laid in Boisanabi Tea Estate (1989 Lab. I. C. 557), Food Corporation of India [1983 (3) S. L. R. 116], T. K. Singh (1969 S. L. R. 18), and Ram Subhash Ojha (AIR 1967 Cal. 81).

15. When findings are based on admission of guilt by delinquent employee then though techincally it is true that the witnesses cited by the management or employee were not examined by the Enquiry Officer but this, under such circumstances, would not cause any prejudice to him and non-examination of defence witnesses cannot be said to have invalidated the findings recorded by the Enquiry Officer. Once an opportunity to show cause is given to an employee, the employer is exonerated of its duty of giving reasonable opportunity to the employee concerned. But if the employee does not a vail opportunity for showing cause and throws himself at the mercy of the Disciplinary Authority or tender an unqualified apology then he is not entitled to any relief on the ground that the enquiry was in violation of the principles of natural justice. In domestic enquiries principles of criminal jurisprudence, requiring absolute proof of guilt cannot be imported. Reference can be made to the precedent in Bhagati Singh (AIR 1966 Pat. 205), Hindustan Aircraft Ltd. [1969 (2) LLJ 45] and John (AIR 1965 S. C. 163).

16. In view of admission of guilt made by the delinquent official before the Enquiry officer, the bank was not under an obligation to examine witnesses in the enquiry. It was also not incumbent upon the Enquiry Officer to call upon the claimant to examine his witnesses in defence. Enquiry proceedings were in consonance with the principles of natural justice. It does not lie in the mouth of the claimant to find fault with it. His admission of guilt before the Disciplinary Authority substantiates factum of admission of guilt made before the Enquiry Officer and futher concludes that it was free and voluntary. Under such circumstances it does not lie in the mouth of the claimant to raise a wisper against the procedure of the Enquiry. Taking into account these facts, coupled with the principles of law referred above, I am constrained to conclude that the enquiry conducted against the claimant was in consonance with the principles of natural justice and fair play. It stood established that the claimant wrote to the bank, making a request in letter dated 15-9-82 to grant him permission to appear in matriculation examination to be conducted by Board of School Education, Himachal Pradesh, in October, 82 and on his application the bank accorded him permission to appear in the said examination vide letter dated 18-10-82. It also stood established that in fact he appeared in the examination in the month of September, 82. Thus he misled led the bank and obtained permisssion to appear in matriculation examination to be conducted by Board of School Education, Himachal Pradesh, in October, 82. Another charge was levelled against him in respect of showing lack of integrity and honesty, since he submitted mark-sheet dated 10-1-83 purported to have been issued by Board of School Education, Himachal Pradesh, bearing Roll No. 65914 projecting that he had passed matriculation examination, held by the said Board in September 82, which mark sheet was later on found to be fake and not issued by the said board. On the basis of the said fake mark sheet, he secured his promotion to clerical cadre w.e.f. 1st of September, 84. These instances were also found to be acts of unbecoming a bank employee and prejudicial to the interest of the bank. Therefore, it has been projected by charge sheet Ex.MW1/W4 that four head charges were levelled against the claimant in the charge-sheet dated 14-3-2000, proved as Ex.MW1/W1. Punishment of bringing him down to a lower stage in scale of pay by two stages with cumulative effect was awarded for the act of misleading the bank in order to get undue gain, punishment of bringing down him to a lower stage by two stages with cumulative effect was awarded to him for acts of showing lack of integrity and honesty, punishment of bringing him down to a lower stage by one stage with cumulative effect was awarded to him for an act of unbecoming a bank employee and punishment of warning was accorded to him for act prejudicial to the interest of the bank, vide order Ex.WW1/M11.

17. What should be the appropriate punishment, which can be awarded to the claimant, is a proposition which would be addressed by this Tribunal. Right of an employer to inflict punishment of discharge or dismissal is not unfattered. The punishment imposed must commensurate with gravity of the misconduct proved against the delinquent workman. Prior to enactment of section 11-A of the Industrial Disputes Act, 1947 (in short the Act), it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commensurative with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court, in this connection, had, however, laid down in Bengal Bhatdee Coal Company [1963 (1) LLJ 291] that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

18. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in Hind Construction and Engineering Company Labour [1965 (1) LLJ 462]. Likewise in Management of the Federation of Indian Chambers of Commerce and industry [1971 (II) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In Ram Kishan [1996 (I) LLJ 982] the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by any body against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight-jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts."

19. In B. M. Patil [1996 (II) LLJ 536], Justice Mohan Kumar of Karnatka High Court observed that in exercise of discretion, the Disciplinary Authority should not act like a robot and justice should be moulded with humanism and understanding. It has to assess each case on its own merit and each set of fact should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commmit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

20. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in Sanatak Singh (1984 Lab. I.C. 817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in Kachraji Motiji Parmar [1994 (II) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, Section 11A of the Act specifically gives two folds powers

to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

21. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untramaled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge of dismissal was not justified.This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore , the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer.The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriating of employers fund, theft of public property etc. A reference cannot be made to the precedent in Bhagirath Mal Rainwa [1995(1)LLJ960].

22. Punishment of ringing the claimant down by two stages with cumulative effect for an act of misleading the bank, same punishment for an act of lack of integrity and honesty, punishment of bringing him down by one stage for an act of unbecoming a bank employee and punishment of warning for an act prejudicial to the interest of the bank are claimed to be shockingly disproportionate to the misconduct committed by him. When punishments, so awarded to the claimant, are taken into consideration alongwith aggravating factors of his misconduct, it emerges over the record that an ordinary prudent man cannot question reasonableness of punishments awarded to the claimant. The claimant misleads his authorities and seeks permission to appear in a matriculation examination, after taking the exam in September, 82. He had not been honest and tried to seek permission to appear in examination after taking that examination.Therefore, his act is too alarming in complexion, since he may present wrong facts to his authorities with a view to grind his axe. He submits a fake mark sheet, purported to have been issued by Board of School Education, Himachal Pradesh, which projected that the claimant passed matriculation examination held by the said Board in September, 82. On the basis of the said mark sheet, he secured his promotion to clerical cadre w.e.f. 1st of September, 84. These events bring to light that the claimant lacks integrity and honesty and may do acts which are prejudicial to the interest of the bank and unbecoming of a bank employee. These instances project grave misconducts and punishment awarded to the claimant are more lenient than his misconducts. Therefore, it is crystal clear that punishment, so awarded to the claimant, cannot be termed disproportionate to his misconducts, not to talk of shockingly disproportionate. I find no case to interfere with the puunishment awarded to the claimant.

23. Show cause notice dated 7-9-2001 was served upon the claimant calling upon him to explain as to why he should not be reverted from clerical cadre to subordinate cadre. This show cause notice was served upon him much after the punishments referred above. After the said show cause notice was replied by the claimant on 4-10-2001 on 29-10-2001 he was reverted to sub staff cadre with effect from the date of receipt of that letter. Claimant agitates that this reversion results in double jeopardys. He further argued that his reversion amounts to punishment, which has been awarded without following the procedure, contained in clause (2) of Article 311 of the Constitution. It has been agitated that on rendering 12 years of service in sub-staff cadre, he was eligible for promotion to clerical cadre. On that issue Shri A. Shankarnarainan clarifies that no automatic promotion was available to a sub staff, after rendering 12 years of service. Promotion rules, proved as Ex.WW2/2, provide that a subordinate staff who have passed S.S.C./matriculation or equivalent examination is not required to put in any minimum period of service for his promotion to the clerical cadre. However, candidate, who appeared at S.S.C./matriculation or equivalent examination but failed had to render 10 years of service in subordinate staff for seeking promotion to clerical cadre. Candidate who had passed examination one standard below SSC/ Matriculation or equivalent examination have to render 12 years of service for his promotion to clerical cadre. All eligible candidates have to appear for written test prescribed by the bank, except the candidates who have secured minimum 45 marks in English and/or Arithmatic/ Mathematics in S.S.C. examination. Subordinate staff, who are graduates and just secured 50% marks in aggregate in SSC would not be required to appear for the written test, provided they have passed in English and Arithmatic. They would be directly interviewed for promotion to clerical cadre. Therefore, it is emerging over the record that a subordinate staff, who is 9th pass has to render 12 years of service for becoming eligible for promotion to clerical cadre. One who has passed 9th standard and appeared in matriculation examination but failed would be eligible for promotion on rendering 10 years of service in subordinate cadre. Here in the case, the claimant is educated upto 8th standard, as testified by Shri Amrit Lal. Therefore, claim put forward by Badloo Ram that on rendering 12 years of service in subordinate cadre he was eligible for promotion, is unfounded.

24. Whether reversion of the claimant to sub-staff cadre would amount to reduction in rank ? As projected above promotion of the claimant to clerical cadre was

secured by way of presentation of a fake mark sheet, purported to have been issued by Board of School Education, Himachal Pradesh. Therefore, his promotion was illegal. He was not having any legal right to be promoted to clerical cadre. His reversion to the subordinate staff would not amount to an act of punishment. The Apex Court in Sri Nivasan (1958 S.C.R. 1295) had ruled that if a man's appointment to a post is itself irregular, unauthorized and invalid, termination of such an appointment on discovery of mistake in that appointment cannot be said to be an act of punishment. In Purshotam Lal Dhingra [1958 (II) LLJ 544] the Apex Court observed that if a government servant has right to a particular rank then the very reduction from that rank will operate as a penalty, if he will then loose emoluments of that rank.

25. The Apex Court went on to observe that a reduction in rank like wise may be by way of punishment or it may be innocuous thing. Inspite of the use innocuous expression, the court has to apply two tests, namely, (1) whether the servant had a right to the post or rank, or (2) whether he has been posted with evil consequences of the kind above referred to. If the case satisfies either of the two test then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or his reversion to his substantive rank must be regarded as reduction in rank and if the requirements of the rules and Article 311, which give protection to the government servant, have not been commplied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant.

26. The sole question that arises: was the claimant entitled for his promotion to clerical cadre ? As held above, the claimant was 8th pass and not entitled to promotion for clerical cadre. In fact he was appointed on misrepresentation of facts, by submitting a fake mark sheet purporting to have been issued by Board of School Education, Himachal Pradesh. When that mistake came to light, it was corrected. It cannot be said that any right of the claimant has been taken away from him. He was placed at the very place where he should have been in case fake mark sheet would not have been presented by him. Therefore, his reversion to subordinate cadre is not by way of punishment. Since no punishment is involved in his reversion, Article 311 of the Constitution have no application.

27. When no penal circumstances were involved in reversion of the claimant to sub staff cadre, he cannot agitate that it was a case of double jeopardy. Punishment awarded to the claimant in domestic action was for his misconducts, which were proved against him. His reversion is not an act of punishment and it does not lie in his mouth that he has been double jeopardized. Action of awarding punishment on departmental enquiry and reversion subsequently are not based on same facts. His reversion took place when bank detected facts and placed him at the right position where he ought to have been. No case of punishment can be alleged in the reversion order.

28. In view of the reasons detailed above, I cannot find any illegality in the actions of the Bank of Baroda in the matter of awarding punishment as well as reversion of the claimant to sub staff cadre. Claimant is not entitled to any relief in that regard. His claim statement is discarded, being devoid of merits. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 27-8-2010

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 17 सितम्बर, 2010

का.आ. 2575.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. II, चण्डीगढ़ के पंचाट (संदर्भ संख्या 26/2K4) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-9-2010 को प्राप्त हुआ था।

[सं. एल-12012/15/2004-आईआर(बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 17th September, 2010

S.O. 2575.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No 26/2k4) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of State Bank India, and their workmen, which was received by the Central Government on 17-9-2010.

[No. L-12012/15/2004-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, CHANDIGARH

Present : Sri A. K. RASTOGI, Presiding Officer

I. D. No. 26/2 K4

Instituted on 30-11-2004

Sh. Ram Niwas C/o Shri Ashok Sharma, House No. 1668, Sector-3, Faridabad.

....Applicants

Versus

The Assistant General Manager, State Bank of India, Region III, Zonal Office, Haryana, Sector 5, Panchkula.

...Respondents

APPEARANCES

For the workman : Sh. Tara Chand Dhanwal, Advocate

For the Management : Sh. V. K. Sharma, Law Officer.

AWARD

Passed on 12th August, 2010

Government of India vide notification No. L-12012/15/2004-IR (B-1), dated 21-06-2004, by exercising its powers under Section 10 Sub-Section (1) Clause (d) and Sub-Section 2(A) of the Industrial Disputes Act,1947 (hereinafter referred as the Act) has referred the following Industrial dispute for adjudication to this Tribunal :—

" Whether the action of the management of State bank of India, terminating the services of Sh. Ram Niwas S/o Shri Banwari Lal, Peon w.e.f. 2-4-2003 is just and legal ? If not, to what relief the workman is entitled ?"

According to the claimant he was engaged by the management on 16-05-1992 as a Peon. In addition to the Peon duties he used to arrange the water also. For this additional work he was issued cheques every month from the year 1992-93 to November 2002. Last drawn salary of the claimant for the duties of Peon and waterman was Rs. 1500 + 750 = 2250. His services were terminated on 02-04-2003 without any reason and rhyme. He worked for about 10 years continuously and completed 240 days' service in each year. in the year 2002 he remained in service under the fictitionus names of Laxmi Narain, Narender and Suresh. His termination is in violation of the provisions of the act. He has prayed for his reinstatement with all consequential benefits.

In its reply the management denied the appointment of the claimant as Peon. According to it the claimant had been engaged as Casual Labour @ Rs. 15 per day as and when required during the year May 1992 to December 1992. He was not performing any fixed time job and took leave after completion of the assigned job. Thereafter, he was engaged against lump-sum amount for filling of drinking water and watering the plants once or twice a week during the year 1993 to 2001. His services were not availed in any capacity since 2001 hence, There was no question of making payment from November 2002 to March 2003. He is not a workman under the Act and there is no question of terminating his services and there is no violation of any provisions of the Act.

The claimant filed replication and mainly reiterated his claim statement.

On the pleadings of the parties, following issues are framed for decision :—

1. Whether the claimant is a workman and his services were terminated on 02-04-2003 ?

2. Whether the claimant completed 240 days service during the calendar year preceding to his alleged termination on 02-04-2003 ?

3. Whether the services of the workman/claimant were terminated in violation of the provisions of the Act ?

4. To what relief the workman is entitled ?

In suport of its claim the workman filed his two affidavits and the affidavits of ex-employees of the bank Murari Lal, retired special Assistant, Radhey Shyam, retired Record Keeper and Kamal Singh, retired Assistant Manager. Affidavits of two Guards Jagdish and Dhoop Singh were also filed. Besides it, the claimant filed bills of Rickshaw fare for the period from 16-04-1993 to 20-03-2003 and also an authority letter dated 19-02-2002 of Chief Manager. These are mentioned in his affidavit dated 09-07-2009 as Ex.W-1/A-2, Ex.W-1/A-120, and Ex.W-1/A-1 respectively.

Against it the management filed the affidavit of the then Chief Manager Bhiwani Branch Paramjit Singh and of the then Branch Manager, Bhiwani Branch D. K. Sharma. Shri Paramjit Singh was not examined to tender his affidavit and so could not be cross-examined and the evidence of the management was closed on 04-11-2009. I have heard the learned counsel for the claimant and the Law Officer of the Management and also went through the written argument of the management. My findings on the various are as follows :—

Issue No. 1

The claimant Ram Niwas in his affidavit has stated that he had been engaged on 16-05-1992 by the management as Peon and he performed multifarious duties of the Peon. In addition to the duties of Peon he used to arrange water also for which he had been issued cheques from the year 1992 to November 2002. Like regular employees he was paid Rickshaw fare and he used to take Dak to various Government Offices and bank after entries in the Peon Book. He worked for whole of the day on seven days a week but in the year 2001-02 the cheques were issued under the fictitious names. However, cheque Bills are in the handwriting of the claimant. Whenever he identified any client for opening the new bank Account, the bank officials used to mark staff under his name. The retired bank employees Radhey Shyam Sharma, Muni Lal Sharma, Kanwal Singh, Jagdish Singh supported the claim of the claimant that he worked as Peon. Radhey Shaym Sharma worked in the concerned Branch from 10/1978 to 7/2000, Muni Lal from 10/1976 to 31-01-2001, Kanwal Singh from 1995 to 1998. Dhoop Singh Guard from 5/1986 to 11/2005 and Jagdish from 18-10-1983 to 30-09-2005.

Management witness D.K. Sharma was the Branch Manager of Bhiwani Branch from 31-07-1991 to 02-06-1994. He stated in his affidavit that he had engaged the claimant as casual labour during the period May 1992 to December

1992 intermittently on different dates as and when required @ Rs. 15 per day. He never appointed the claimant as Peon nor he had any authority to appoint any person as Peon or Messenger unless he is selected by the competent authority at Zonal Office/Local Head Office of the bank based on the interviews conducted by the Selection Committee. He further stated that after December 1992 the workman was engaged against lump-sum amount for filling drinking water and watering the plants once or twice a week's period.

From the evidence of the parties it is clear that there was a relationship of employer and employee between the management and the claimant. Even if he was employed as a casual labour and part time worker then also the status of a workman cannot be denied to him. I do not agree with the arguments of the Law Officer of the management that the claimant was not a workman.

Now the question is whether the services of the claimant were terminated on 02-04-2003 as alleged by him. There is no termination order. It was argued by the learned counsel for the workman that there is ample evidence to show that the workman continued in service till March 2003. It makes probable the statement of workman that his services were terminated on 02-04-2003. He relied on the Rikshaw fare Bills Ex. W-1/A-2 to W-1/A-120 and the affidavits of Murari Lal, Radhey Shyam, Kamal Singh, Jagdish and Dhoop Singh.

The first three witnesses i.e. Murari Lal, Radhey Shyam and Kamal Singh were not in service in 2003. They had retired by then. The other two witnesses Jagdish and Dhoop Singh were the guards in the Bank. Their evidence that the claimant worked as Peon till 02-04-2003 cannot be accepted. The documentary evidence supports the management version that the employment of claimant ceased after 2001.

The management paper Ex.M-1 is an application of the claimant. It is dated 13-12-2002 for a permanent job in the Bank. The claimant has shown in this application to have worked in the Bank from January 1993 to 2001 for filling the water and looking after the plants. The statement of the workman that he had signed the application on the asking of the Bank Manager cannot be accepted

It also cannot be accepted that in 2001-02 cheques of wages were issued to him under fictitious names and the cheque bill are in his hand writing. There is no expert evidence to prove the handwriting and the statement is not probable.

Rickshaw fare Bills Ex. W-1/A-2 to W-1/A-120 are not about the payment of salary.They relate to the occasional and sundry work taken by the management from the claimant on payment.

From the evidence on record it is clear that the employment of the claimant with the management lasted up to 2001.

It is, therefore, held that the claimant was a workman but his services were not terminated on 02-04-2003. Rather it terminated in 2001. Issue No.1 is decided accordingly.

Issue No. 2

In this issue it is to be decided whether the claimant completed 240 days of service during the calendar year preceding to his termination on 02-04-2003. It has already been held in issue no. 1 that his services were not terminated on 02-04-2003. Actual date of termination of his service is not clear. The claimant has made a bald statement that he completed 240 days service in each year. However, there is no cogent evidence about this fact. In the absence of specific date of termination and cogent evidence about the working days during which the claimant worked, it cannot be held that he worked 240 days during the calendar year preceding to his termination. Issue No. 2 is decided against the workman.

Issue No. 3

Since there is no evidence on record to show that the claimant completed 240 days service during the calendar year preceding to his termination, he cannot held to be entitled to the protection of section 25F of the Act. There is nothing on record to show the violation of section 25H of the act, that his appointment was on a post, which still exists and on which any other persons had been employed. Issue 3 is decided against the workman.

Issue No. 4

The claimant has claimed his reinstatement but he is not entitled to it . It is in his cross-examination that his name had not been sponsored by Employment Exchange, he was not given any appointment letter and he never marked his attendance in the bank.

thus the claimant was not appointed by the competent authority and according to recruitment process. He was not a regular employee and he cannot be reinstated or regularized in view of law laid down by the Hon'ble Supreme Court in secretary state of Karnataka versus Umadevi & Others 2006 (3) SLR 1 wherein it was held that those appointed irregularly and not in terms of prescribed procedure have no right to be made permanent.

From the above going discussions, it is clear that the workman is not entitled to any relief. Much castling too could not help him. His services were not terminated by the management on 02-04-2003 but terminated in 2001 and the reference is answered against him accordingly. Let two copies of the award be sent to the Central Government for further necessary action and record by consigned after due compliance.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 17 सितम्बर, 2010

का.आ. 2576.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सांगली बैंक लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, लेबर कोर्ट, सांगली के पंचाट (संदर्भ संख्या 6/2006) को प्रकाशित करती है,जो केन्द्रीय सरकार को 17-9-2010 को प्राप्त हुआ था ।

[सं.एल- 12012/19/2006 आईआर(बी.-I]

रमेश सिंह, डेस्क अधिकारी

New Dehil, the 17th September, 2010

S.O. 2576.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 6/2006) of the Labour Court, Sangli as shown in the Annexure, in the industrial dispute between the management of the Sangli Bank Ltd., and their workmen, received by the Central Government on 17-9-2010.

[No. L - 12012/19/2006-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER LABOUR COURT, AT SANGLI

(Presided over by Shri, A.S. Kazi, (B.A.LLM)

Ref. (I.D.A.) No. 6/2006

Between

I.C.I.C.I. Bank Ltd.
Rajwada Chowk, Sangli. 1st Party.
416416,

AND

Shri Annasaheb Bhimrao Karajange,
Plt. No. 71, "Nilambar", Vidyanagar,
Jath, 416404, Dist-Sangli. 2nd Party.

Claim:- In the matter of reinstatement with continuity of service and full back wages.

CORAM :- A.S. KAZI, Presiding Officer.

APPEARANCES:-

Shri U.J. Chipre, Advocate for 1st party.

Shri K.H. Kulkarni, Advocate for 2nd party.

AWARD

(Delivered on 26th July, 2010)

1. The Government of India, Ministry of Labour has forwarded this reference U/sec. 10(2A) and 10 (1) (d) of the Industrial Disputes Act 1947 for adjudication over the following demand of the 2nd Party :

Whether the action of the Management of Sangli Bank Ltd., Sangli in imposing the penalty of dismissal from the services of Shri Annasaheb Bhimrao Karajange, w.e.f. 31-8-2004 is legal and justified? If not, to what relief the concerned workman is entitled to?

2. In the statement of claim at Exh. U-4 the 2nd party workman has contended that he was in the employment of the 1st party in the "Clerical Cadre" at its various branhes since 25-06-1977 till he was illegally dismissed from service by the party No. 1 by order dated 31-08-2004. Accordingly to him the said order of dismissal is illegal, baseless, bad, colourable, unfair, unwarranted and unsustainable from all aspects and angles of law, justice and equity. His last drawn salary was Rs. 16,300

3. It is further averred that the 2nd party joined the services of the 1st party Bank initially as a "Clerk" from 25-7-1977. Subsequently, he was posted to various branchers with as Sangli, Miraj, Jath, Kavthe Mahankal etc. In 1985 the 2nd party was posted at Billur and was required to look after Loan Proposals for Agricultural Purposes in the three branches of the Bank which are Billur, Umrani and Tikondi . In the year 1988, he was promoted as "Clerk-Cum-Agricultural Assistant". After few year he was also required to look after two more branches of the Bank viz Jath and Kavthe Mahankal, in addition to the above three branches.

4. It is further contended that on 10-2-2003 the 2nd party was transferred from Billur branch to the Regional Branch, MarketYard, Sangli. Immediately after the transfer, he was placed under suspension by order dated 20-03-2003 and was subsequently given a charge-sheet on 5-05-2003 for false and baseless grounds and reasons by 1st party. The 2nd party has given a table of those charges in Para No. 4 of the Claim.

It is contended that thereafter the enquiry was conducted against him and 2nd party participated in the said enquiry and defended himself. The Enquiry Officer gave his findings and report dated 24-1-2004. However, it is contended that the Enquiry Officer, as seen from the report, framed some new and imaginary charges and has given his findings in respect of old charges, new charges and accounts of each customer. The gist of the findings is given by the 2nd party in a tabular form in Para No. 4 on Page No. 3 of his Claim.

5. According to the 2nd party the Enquiry Officer has held that the allegation of taking or demanding bribe or illegal gratification in the case of Account of Santh Family

is not proved (Page 7 of the Enquiry Report). He has also held that, there were some irregularities in maintenance of accounts of Shri Shivnoor and Kempwad Family but the same were not intentional and it is not a gross misconduct (Page 11 and 19 of the Enquiry Report). In respect of Loan Account of Shri P.M. Koli, no charge of demanding bribe or illegal gratification is made against the Party No. 2, but he is only charged with "Acted prejudicial to the interest of the Bank". However, the Enquiry Officer invented the charge of demanding or takaing bribe and gave his finding in affirmative. Thus, the Enquiry Report is perverse, biased, baseless, bad and faulty as far as invention and adding of new charges is concerned. Obviously, the action based on such defective and perverse Report is also illegal, baseless, bad, unfair and unwarranted.

6. It is further contended that out of the original three charges, the 1st party could not prove two serious charges levelled against the 2nd party and the Enquiry Officer clearly exonerated the 2nd party. Therefore, what remained were minor Acts of unintentional irregularities in maintaining accounts on the part of the 2nd party. But, for the minor lapse, the 1st party inflicted the capital punishment of dismissal. The Disciplinary Authority failed to take into account the three aspects viz.- the gravity of misconduct, the aggravating and extenuating circumstances and the past record of the delinquent. In short, the Disciplinary Authority totally ignored the fact that the Enquiry Officer had exonerated the 2nd party from two serious charges and in respect of the charges not levelled in the charge-sheet but invented by the Enquiry Officer, he has held the 2nd party guilty. Therefore, it is contended that the punishment inflicted is shokingly disproportionate and therefore the dismissal order dated 31-08-2004 is baseless, illegal, unfair, bad and colourable on all aspects and courts of law, equity, good conscience and reasons. It is also contended that the 1st party failed to take into account the long standing meritorious, untainted and unblemished service of the 2nd party and awarded him the capital punishment on the verge of his retirement. Hence, it is prayed that the reference be allowed and the dismissal order dated 31-08-2004 be declared to be illegal, baseless,unjustifiable and void and the same may be quashed and set aside. It is further prayed that the relief of reinstatement to the original post with full back wages and all consequential benefits, continuity of service with the seniority may be granted in favour of 2nd party.

7. The 1st party opposed the above claim by filing the Say at Exh. C-4 on the ground that the entire contends therein are misleading mischievous, ill-conceived and hence denied in toto. It is admitted that the 2nd party was working as "Clerk-cum-Agri. Asst.". at the banks Billur Branch and was looking after the Agricultural Advances portfolio of the Branches coming under "Jath Block" viz. Umrani, Billur and Jath Branches. It is contended that the 2nd party was governed by the service conditions as per the B.P. Settlement which at cast on him a number of duties such as scrutiny of applications which included visit to the farms for verification and collection of relevant data before sanctioning the loans, to keep in constant touch with farmers and to bring any advers features to the Managements Notice and to verify proper utilisation of the Banks Loans or the progress in work in respect of which loans are granted and to furnish reports and such verification. The detailed list of the duties are mentioned in Para No. 2 Page No. 2 of the Say filed by the respondent.

8. It is further averred that, for the lapses/irregularities observed on his part being serious in nature, in Agri Advances port folio at the branches under "Jath Block", he was suspended w.e.f. 20-03-2003 and a charge-sheet was issued to him on 05-05-2003 levelling following charges-

I. Breach of rules, guidelines and instructions issued by the Bank from time to time for transacting business of the Bank.

II. Acted prejudicial to the interest of the Bank.

III. Took bribe/illegal gratification from a customer of the Bank.

It is further averred that the 2nd party had denied the charges through his Written Statement of defence dated 16-06-2003. Domestic Enquiry was ordered and the Enquiry Officer completed the Domestic Enquiry. 2nd party participated in the enquiry and defended his case. All the copies of papers taken on record as exhibits as also copies of hearing proceedings were given to him.

9. It is further averred that the enquiry conducted by the Enquiry Officer was according to the principles of natural justice.The findings of the Enquiry Officer are as per the evidence before him and so the Disciplinary Authority concurred with the said findings. However, before coming to any conclusion, the Disciplinary Authority called for the Say of the 2nd party towards the findings of the Enquiry Officer and having come to the conclusion that the proved charges are serious in nature, proposed to award a punishment of dismissal to the 2nd party. Again the Say of the 2nd party was invited over the quantum of the punishment. The 2nd party submitted his Say be letter dated 5-5-2004 over the nature of the punishment stating that the punishment is disproportionate and that he is ready to accept punishment like (i) stoppage of, one or two increments (ii) withdrawal of Agri. Assistants allowance etc. However, as the 1st party is a financial institution dealing with the funds of the public kept by them in good faith and confidence, it thought it fit to impose the deterrent punishment.

10. It is further contended that the dismissal alone was the fit and proper punishment because the 2nd party had managed among other serious act, to divert the funds which were meant to be credited to the loan account for which the Bank and Financed and by doing so, he had put the public funds in jeopardy. In addition to this the 2nd party had given a false and favourable report in respect of one more customer which was in fact not at all feasible. The proposal would not have received any favourable consideration by the Sanctioning Authority but for the false and favourable pre-sanction scrutiny report of 2nd party. In view of these and other findings of the Enquiry Officer the Disciplinary Authority found that major misconducts were committed by the 2nd party which were detrimental to the interest of the Bank and also speaking on the credentials of the 2nd party. Therefore, dismissal was the only fit and proper punishment. Thus, the punishment was the outcome of the properly conducted enquiry.

11. It is further contended that the charges were properly framed against the 2nd party as well as properly mentioned in the charges-sheet. To decide whether he charges levelled against the 2nd party were proved or otherwise, the Enquiry Officer framed issues for each of the accounts included in the charge-sheet and after discussing the evidence before him, he recorded his findings with sound reasonings.

The basis for levelling these charges against the 2nd party were in short according to the respondent as under.

"Party No. 2 was working as a "Clerk-cum-Agricultural Assistant" at the Billur Branch and was looking after the agricultural portfolio at the branches coming under the Jath Block. As an agricultural assistant he had failed to discharge his duties properly and had intentionally deviated from the guildelines of the Bank by indulging into acts of :

i. Diverting the sale proceeds of the sugarcane of a borrower for which the Bank had financed, by managing to send the sugarcane in the name of his (2nd party's) wife by making an agreement between the said borrewer of the bank and his (2nd party's) wife, agreement having been duly witnessed byParty No.2 himself, without the knowledge of the Bank and not crediting the bill proceeds to the loan account, thereby allowing the loan account and other family accounts of the group to remain irregular.

ii. Mis-representing/connecting the factual position of a borrower at Umrani Branch through the credits reports prepared by him (Party No. 2) for the loan of the same borrower at Jath Branch, in spite of both the loan proposals having been attended to by him (2nd Party) from the initial stage of processing of the proposals etc.

iii. Favouring a family of the borrowers by not disclosing the guarantee of said borrower to a loan sanctioned to other family member at Umrani Branch, through the reports prepared by him (2nd party) on the borrower while recommending to loan proposals at Billur Branch.

iv. False reporting about the availability of perennial water source,electric pole nearly to the well etc. through the pre-sanction scrutiny report of the loan proposal, thereby giving undue advantage to the borrower in getting sanctioned the loan when in fact there was no electricity supply to the land of the applicant, there was no water in the well or when there was no pipeline itself etc. Later on leaving apart these gross irregularities, which if disclosed would not have allowed sanction of the loan, he did not ensure creation of the assets out of the loan."

12. In short,it is contended that the Enquiry Officer properly framed the charges and thereafter, after marshalling the evidence recorded his findings on each of the issues.

It is contended that, at any rate, there was misrepresentation or concealing of material facts by the 2nd party which ultimately favoured the sanction of loan to the borrowers. The 2nd party also diverted the sugarcane proceeds in the name of his wife. Therefore, the findings of the Enquiry Officer and the punishment awarded by the Disciplinary Authority are without bias and befitting to the grave acts committed by the 2nd party. Hence, it is prayed that the claim be dismissed with costs. Hence, the reference be dismissed.

13. In view of the rival pleadings of both parties my learned predecessor framed in all five issues below Exh. 0-4. Out of those issues the issue No. 1 had become redundant because the 2nd party filed the pursis at Exh. U-9 that he does not want to challenge the mechanical process of enquiry and the legality and the properiety of the enquiry. Therefore, the remaining issues arise for determination before me and I record my findings thereon for the reasons enumerated hereinafter :

	Issues	Findings
2	Does the 2nd Party prove that the findings recorded by the Enquriy Officer are not based on the evidence before him?	*In the negative*
3	Whether the punishment of dismissal of services given to the 2nd Party workman is illegal and disproportionate?	*In the negative*
4	Whether the 2nd Party is	*In the negative*

	Issues	Findings
	entitled to reinstatement with continuity of service and full back wages?	
5	What order ?	*As per final order*

REASONS

In order to prove his case the 2nd party workman examined himself at Exh. U-10 and closed his evidence by filing the pursis at Exh. U-11. As against this the 1st party filed the pursis at Exh. C-9 that it does not want to lead any oral evidence in the matter.

14. As to issues No. 2 to 4 :—

All these issues being interlinked, I answer them together for sake of convienience.

The first and foremost issue which needs to be determined in the present matter is as to whether the findings recorded by the Enquiry Officer are as per the evidence before him. For the said purpose we have to go through the record of the enquiry proceedings which is produced on record in two sets by the 1st party. It is also worthwhile to go through the oral evidence of the 2nd party below Exh. U-10.

15. In order to decide whether the Enquiry Officer while recording his findings considered the evidence before him or not first of all we have to see the admissions given by the 2nd party workman in his cross examination below Exh. U-10. In his cross examination the 2nd party is admitted that there was a Bi-Partite settlement under which twelve duties mentioned in para No. 2 of the Written Statement at Exh. C-4 were assigned to the 2nd party. He has further admitted that two common charges levelled against him were breach of rules, guidelines and instructions issued by the Bank from time to time for transacting the bussiness of the Bank and that he acted prejudicial to the interests of the Bank in all the four loan accounts. In this background let us examine the other admissions given by him about dereliction of duties. It is pertinent to note here that the 2nd party has admitted that he was the Recommending Authority of the loan granted to Shri Siddaram Shivnur from the Umrani Branch. The said loan was sanctioned in the year 2000. Again, the 2nd party recommended the grant of a grape loan to Mr. Shivnur in May, 2002 at Jath Branch. It is further admitted by him that while sanctioning the said loan at Jath to Mr. Shivnur he had not considered the loan account of Umrani Branch. It is also admitted by him that it was his responsibility while recommending the second loan to give clear picture about the loan status of the party and further that both the Jath and Umrani Branches were under his jurisdiction but that in the presanction verification report/credit report he had not disclosed the details of Umrani Loan Account of Mr. Shivnur.

All the above admissions go to show dereliction of duties by the 2nd party and these very facts were properly considered by the Enquiry Officer as seen from his findings.

16. Again, in respect of the loan account of one Mr. G. C. Kempwad, the 2nd party is admitted that one Annappa Kempwad was the personal guarantor for the said loan account and that said Annappa himself was having two loan accounts of Rs. 50,000 and 30,000 respectively at Umrani Branch. The loan to Mr. G.C. Kempwad was sanctioned at Billur Branch and further that both the Branches of Umrani and Billur were under jurisdiction of the 2nd party but he has not disclosed those loan accounts of the guarantor in the approval report of loan to Mr. G.C. Kempwad.

In respect of the loan account of Santi Family also the 2nd party has given the admission that Gat No. 445 of village Khojanwadi was one of the security for the said loans and the sugarcane proceeds from the said loan were sent to the sugar factory in the name of his wife. He has further admitted that for the said years the crop sale proceeds of sugarcane were not credited in the loan account of B.A. Santi. Therefore, all the above admissions prima-facie show the dereliction of duties committed by the 2nd party and it also appears from the findings of the Enquiry Officer that he considered the evidence before him in respect of said admitted facts.

17. Reverting back to the findings of the Enquiry Officer recorded in the enquiry, the said findings which are on record before me clearly show that he discussed the evidence before him elaborately and thereafter recorded his findings. The charges which are held to be proved against the 2nd party amount to gross misconduct. From the proved charges it is clear that the 2nd party misused his position in the Bank and committed breach of the provisions of the Bi-Partite Settlement. He thus committed the breach of the rules, guidelines and instructions issued by the Bank Knowing fully well that Gat No. 445 of village Khojanwadi belonging to the Santi Family was one of the security for the loans enjoyed/availed by the Santi Family, he allowed his wife Mrs. Anuradha to enter into an agreement in respect of said land. Not only this he stood as a Witness to the said agreement. This is only of the instance of misconduct and misutilisation of his position by the 2nd party which is considered by the Enquiry Officer in arriving at the findings. The Enquiry Officer found similar dereliction of duties in respect of other loan accounts which amount to breach of the duties prescribed under the Bi-Partite Settlement. In such circumstances the findings recorded by the Enquiry Officer connot be said to be such that no prudent man would reach the same conclusion.

Hence, those findings cannot be held to be perverse. I therefore hold that the findings recorded by the Enquiry Officer are as per the evidence before him. In the result I answer issue No. 2 in the negative.

18. Next question which requires determination is whether the punishment of dismissal of services given to the 2nd party workman is illegal and disproportionate. It is vehemently argued on behalf of the 2nd party that the 2nd party was exonerated of the major charges which were serious in nature i.e. of demanding the bribe from the Santi Family and misutilisation of funds from the loan account of Shivnoor and therefore what remained were minor charges which were unintentional acts/irregularities in maintaining the accounts on the part of the 2nd party. Therefore, considering the past meritorious and unblemished service of the 2nd party, the punishment of dismissal is shockingly disproportionate. It is therefore implored that this Hon'ble Court may utilize its powers under Section 11A of the Industrial Disputes Act, 1947 and may hold the punishment to be disproportionate. Reliance is placed on the authority reported in 2007*LAB. I.C. 318, in the case of B.D. Mandhotra V/s. State Bank of India & Others,* in which it has been held that though the power of interference with the quantum of punishment is extremely limited, if and when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can indicate the punishment to be awarded. (Para No. 28).

19. Per contra, on behalf of the 1st party it is vehemently argued that the charges proved against the 2nd party are serious in nature inasmuch as the 2nd party misused his position in the Bank and committed acts prejudicial to the interests of the Bank. For instance knowing fully well that a surety for one of the loan accounts was already a borrower with the Bank, the 2nd party still recommended, his as a surety and also recommended the sanction of the loan. Further , he allowed his wife to enter in to an agreement in respect of a land which was one of the securities in respect of loan account of Santi Family and also diverted the agricultural produce in the name of his wife. So, showing leniency to him would send wrong signals and would be fatal to the discipline in the Bank which deals with public money and funds.

20. Shri Chipre, Learned Counsel for the 1st party relied upon the authority reported in *2005 LAB L.C. 461, in the case of J.A. Naik Satam V/s. Prothonatory and Senior Master High Court of Bombay,* in which Para No. 8 Their Lordships have observed that an view of the present day situation of rampant corruption in public life the punishment of dismissal is appropriate.

21. After hearing both the sides at length, I find that the 2nd party is an employee of an Institution which is the custodian of public funds and money. Therefore, a duty of utmost faith and trust is cast upon him. But, instead of discharging his duties of reporting the irregularities and defaults in the applications of borrowers, he recommeded the sanction of loan to them without verifying the same properly. He also misutilised his position in the Bank. Party No. 2 was working as a "Clerk-cum-Agricultural Assistant" at the Billur Branch and was looking after the agricultural portfolio at the branches coming under the Jath Block. As an agricultural assistant he had failed to discharge his duties properly and had intentionally deviated from the guidelines of the Bank by indulging into acts of :

(i). Diverting the sale proceeds of the sugarcane, of a borrower for which the Bank had financed, by managing to send the sugarcane in the name of his (2nd party's) wife by making an agreement between the said borrower of the bank and his (2nd party's) wife, agreement having been duly witnessed by Party No.2 himself,without the knowledge of the Bank and not crediting the bill proceeds to the loan account, thereby allowing the loan account and other family accounts of the group to remain irregular.

(ii). Mis-representing/connecting the factual position of a borrower at Umrani Branch through the credits reports prepared by him (Party No. 2) for the loan of the same borrower at Jath Branch, in spite of both the loan proposals having been attended to by him (2nd party) from the initial stage of processing of the proposals etc.

(iii). Favouring a family of the borrowers, by not disclosing the guarantee of said borrower to a loan sanctioned to other family member at Umrani Branch, through the reports prepared by him (2nd party) on the borrower while recommending the loan proposals at Billur Branch.

(iv). False reporting about the availability of perennial water source,electric pole nearby to the well etc, through the pre-sanction scrutiny report of the loan proposal thereby giving undue advantage to the borrower in getting sanctioned the loan when in fact mere was no electricity supply to the land of the applicant, there was no water in the well or when there was no pipeline itself etc. Later on leaving apart these gross irregularities, which if disclosed would not have allowed sanction of the loan, he did not ensure creation of the assets out of the loan. Those charges therefore cannot be said to be minor in nature. Even otherwise when the Disciplinary Authority has considered that the punishment of dismissal was proper on the materials before him in the proper perspective and the punishment is not such as to shock the conscience of the Court, the Labour Court cannot by way of sympathy alone exercise the power under Section 11A of the Industrial Disputes Act and reduce the punishment. Therefore, in the situation of this nature keeping in view the nature of duties that a Bank employee is required to perform, I am of the view that

the Disciplinary Authority cannot be said to have committed an error in imposing the punishment of dismissal from service specially when again similar charges have been levelled against him pending the first enquiry. Therefore, view of the above discussion I answer issues No. 3 and 4 in the negative and proceed to pass the following order.

ORDER

1. The reference is hereby dismissed
2. No order as to costs.
3. Five copies of this award be send to the Government of India, Ministry of Labour, New Delhi for publication and necessary action.

Date- 26-07-2010 A.S. KAZI, Presiding Officer

नई दिल्ली, 17 सितम्बर, 2010

का.आ. 2577.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नार्दन रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारी के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट (संदर्भ संख्या 09/2003) को प्रकाशित करती है,जो केन्द्रीय सरकार को 17-9-2010 को प्राप्त हुआ था ।

[सं.एल- 41012/211/2002 आईआर(बी.-I]

रमेश सिंह, डेस्क अधिकारी

New Dehil, the 17th September, 2010

S.O. 2577.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 9/2003) of the Central Government Industrial Tribunal-cum- Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of the Divisional Superintendent Engineer (III), Northern Railway and their workmen, received by the Central Government on 17-09-2010.

[No. L-41012/211/2002-(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 9 of 2003

In the matter of dispute between-

Sh. Dinanath Tiwari,
Divisional Organization Secretary, Uttar Railway
Karamchari Union,
(119/74 Qr. No. Nseemabad)
Kanpur. 208012.

And

The Divisional Railway Manager,
Northern Railway,
Allahabad.

AWARD

1. Central Government , MOL, New Delhi vide notification No. L- 41012/211/2002-IR(B-I) dated 23-04-03 has referred the following dispute for adjudication to this tribuanl—
2. Whether the action of the Divisional Railway Manager, Northern Railway Allahabad in terminating the services of Sri Prabhunath son of Sri Barsati with effect from 1-3-90 is legal? If not to what relief the concerned workman is entitled?
3. Brief facts are- It is alleged that the claimant Sri Prabhunath was engaged as a casual labour (Substitute Paniwala) on 16-05-79 under DRM. N. Railway at Allahabad at Station Suptd. Northern Railway Kanpur Central. Till 14-08-91 he had been engaged at other places also and he had become to be regularized. After completing 120 days he had been paid difference in the salary as per recommendation of 3rd Pay Commission on 19-12-92 and he had been getting house rent and bonus also. Rly. Board vide his notification dated 11-12-96 has directed that all the 56000 casual labour who had completed till 30-04-96 they should be absorbed against the vacancies accruing till 1997-98. Claimant had continuously worked and in accordance to the notification of the railways he had become entitled for his regularization, but the opposite party has stopped taking work from with effect from 01-03-97. This action of the opposite party is illegal and unjustified. It amount to retrenchment and the opposite party has not followed the provisions of section 25F, G and H of the Act. Therefore, he has prayed that he be reinstated with all the consequential benefits and the order of the opposite party be declared as illegal.
4. Opposite party has filed written statement. They have contradicted the aversions of the claimant but stated that the claimant had worked as a water man only for 86 days in the year1997 and thereafter he has not worked for any period of time. It is wrong to say that he had been continuously working till 1992. Scheme of the railway vide circular dated 8-02-92, has been closed down for the purpose of substitute waterman. Copy of circular is enclosed as annexure1. The working days of the claimant as a waterman from 1979 to 1991 are enclosed as annexure 2. Claimant has never worked as a waterman after the closing of the scheme as waterman. He had never been

employed as a casual labour. The provisions of section 25 of the Act is not at all applicable to the claimant, claim is highly time barred and it is liable to be rejected.

5. Rejoinder has also been filed by the claimant but nothing new has been alleged therein except reiterating the facts already alleged in the statement of claim.

6. Both the parties have filed documentary evidence. Claimant has filed 10 papers vide list paper no. 12/2. First paper is photo copy of record of service of claimant as casual labour, other papers are relating to medical and other papers are notifications and copy of manuals and GO of the relevant which may be available at the relevant time. I will discuss all the papers at the relevant time.

7. Opposite party has filed documents along with written statement.

8. Claimant has not adduced any oral evidence to support his pleadings.

9. I have heard the arguments for the opposite party at length and perused the records and evidence of the case carefully. There is none present at the time of arguments from the side of the claimant.

10. Opposite party has filed an affidavit of Sri V.S. Prabhakar, Asstt. Comm. Manager. It is stated on oath by him that it is wrong to say that the railway is taking work from the claimant after 1991. Witness has further stated that the scheme for the substitute waterman is closed down by the circular of railway board dated 8-2-02. Claimant has never worked after the closing of scheme of waterman. He has never been employed as a casual labour. The claimant has not cross-examined with witness. Therefore, his evidence is uncontroverted. There is no reason to disbelieve his evidence.

11. Opposite party has filed a chart of working days wherein it has been shown that the claimant has worked in the year 1991 from 30-4-91 to 14-8-91 only for 106 days. Claimant has filed his record of service as casual labour which is a photocopy. Even if I take the cognizance of this paper for a moment, this photocopy also discloses the working period as 4-4-91 to 14-8-91 only for 106 days.

12. I have also examined other papers also filed by the claimant. Claimant has not come in evidence to support his pleadings and aversions, Pleadings cannot take the shape of proof unless proved. Initially a heavy burden lies on the claimant to prove his case. He has not discharged his burden whereas documentary as well as oral evidence produced by opposite party is believable. Hence as claimant has failed to prove his case he is held not entitled for any relief as claimant by him.

13. Reference is answered accordingly against the claimant and in favour of the management.

Dated 17-08-2010 RAM PARKASH, Presiding Officer

नई दिल्ली, 17 सितम्बर, 2010

का.आ. 2578.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोलकाता के पंचाट (संदर्भ संख्या 14/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2010 प्राप्त हुआ था ।

[सं. एल- 12011/31/2009-आईआर(बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 17th September, 2010

S.O. 2578.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of State Bank of India, Zonal Office, and their workmen, received by the Central Government on 17-9-2010.

[No. L - 12011/31/2009-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 14 of 2010

Parties: Employers in relation to the management of State Bank of India, Zonal Office

AND

Their workmen

Present : Mr. Justice Manik Mohan Sarkar, Presiding Officer

APPEARANCE:

On behalf of the Management : Mr. S.Pal, Advocate,

On behalf of the Workmen : None

State : West Bengal, Industry: Banking.

Dated: 6th September, 2010

AWARD

By Order No. L-12011/31/2009-IR(B-I) dated 15-10-2009 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of State Bank of India, Zonal Office, Siliguri in imposing a punishment of removal from service w.e.f. 31-7-2007 on Shri Kommana Anand, Assistant, is justified and legal? If not, to what relief the workman concerned is entitled?"

When the case is called out today, Mr. S. Pal, Ld. Advocate is present on behalf of the management. None is present on behalf of the workman association, namely, State Bank of India Staff Association, nor any step has been taken on its behalf to proceed with the matter. The workmen association was also absent on previous two dates. Immediately, after issue of notice on 26-05-2010, one Mr. Dipak Kumar Paul in the capacity of Assistant General Secretary of the workmen association appeared with an application seeking adjournment for filing statement of claim and thereafter two dates passed without any step being taken from the side of the workmen association before the present date.

2. From such conduct of the workmen association it is presumed that they are not interested in the present matter and so at present it is presumed there is no industrial dispute from the side of the workmen in the present case. On the last date a stricture order was passed that if the workmen would fail to appear on this adjourned date and file their statement of claim, adverse order would follow.

3. In such circumstances, the present reference is not needed to be proceeded with any further in view of the conduct of the workmen association and as it is observed that at present there is no industrial dispute, the present reference is treated to be disposed of with the above view and Award is passed accordingly.

JUSTICE MANIK MOHAN SARKAR, Presiding Officer

Kolkata, Dated 6th September, 2010

नई दिल्ली, 17 सितम्बर, 2010

का.आ. 2579.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम डिस्ट्रिक्ट इंजीनियर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोटा के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-9-2010 को प्राप्त हुआ था ।

[सं. एल-40012/58/99-आईआर(डीयू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 17th September, 2010

S.O. 2579.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kota as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telecom District Engineer and their workmen, which was received by the Central Government on 17-09-2010.

[No. L-40012/58/99-IR(DU)]

JOHAN TOPNO, Under Secy.

अनुबन्ध

न्यायाधीश, औद्योगिक न्यायाधिकरण,
कोटा/केन्द्रीय/कोटा/राज.

पीठासीन अधिकारी—अनुराधा शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक:ओ.न्या./केन्द्रीय/20/99

दिनांक स्थापित:18-8-99

प्रसंग: भारत सरकार, श्रम मंत्रालय नई दिल्ली के आदेश सं. एल-40012/58/99-आईआर(डीयू)दि.11-8-99 एवं सपठित शुद्धिपत्र दिनांक 19-5-2004

निर्देश/विवाद अन्तर्गत धारा 10 (1) (घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

सत्यनारायण पुत्र श्री रामदेव

...प्रार्थी श्रमिक

एवं

टेलीकॉम डिस्ट्रिक्ट इंजीनियर,
टेलीकॉम डिपार्टमेंट, बूंदी/राज.

.....अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : श्री बी. एल. कर्ण

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री विश्वजीत शर्मा

अधिनिर्णय दिनांक: 31-8-2010

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासंगिक आदेश संख्या दिनांकित 11-8-99 एवं सपठित शुद्धिपत्र दिनांकित 19-5-2004 के जरिये निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावे) की धारा 10(1)(ज) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :-

"Whether the action of the management of Telecom District Engineer, Bundi in terminating the services

of Sh. Satya Narayan S/o Sh. Ramdeo w.e.f. 31-7-98 is legal and justified? If not, to what relief the workman is entitled?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को सूचना विधिवत रूप में जारी की गयी ।

3. प्रार्थी श्रमिक सत्यनारायण की ओर से क्लेम स्टेटमेन्ट प्रस्तुत कर संक्षिप्त: यह अभिकथित किया गया है कि उसे अप्रार्थी डिस्ट्रिक्ट इंजीनियर (टेलीकॉम) (बूंदी) जिसे तदुपरान्त "अप्रार्थी नियोजक" से सम्बोधित किया जावेगा । द्वारा दि. 21-6-97 को वाहन चालक के पद पर सेवा में नियोजित किया गया था जो अधिनियमान्तर्गत 2 (एस) के तहत कामगार की श्रेणी में आता है । प्रार्थी से गाड़ी नं. आरजी.8सी-0350 पर कार्य लिया गया और 75 रू. प्रतिदिन से भुगतान किया जाता था । प्रार्थी श्रमिक द्वारा दिनांक 21-6-97 से 31-7-98 तक चालक से रूप में कार्य किया गया, किन्तु उसे उक्त नियोजनावधि में 240 दिन तक कार्य पूर्ण कर लिये जाने के उपरान्त भी दि. 31-7-98 को बिना नोटिस अथवा नोटिस वेतन व मुआवजा दिये मौखिक रूप से सेवा से निष्कासित कर दिया गया जोकि अधिनियम की धारा 25-एफ के प्रावधानों के विपरीत है । इसके अतिरिक्त प्रार्थी को हटाकर प्रार्थी से कनिष्ठ श्रमिक हीरालाल मीणा को 1-11-97 से कार्य पर लगाया गया जो आज भी कार्यरत है तथा वरिष्ठता सूची का कोई प्रकाशन नहीं किया गया एवं पहले आये बाद जाये सिद्धांत का भी पालना नहीं की गयी । अत: उक्त प्रकार से सेवा से हटाया जाना अनुचित व अवैध घोषित करते हुए पिछले सम्पूर्ण वेतन व हित लाभों सहित सेवा में पुनर्स्थापित का अनुतोष प्रदान किया जावे ।

4. अप्रार्थी नियोजक की ओर से उक्त क्लेम का जवाब प्रस्तुत करते हुए प्रतिवाद किया गया है कि प्रार्थी को कभी भी चालक के पद पर नहीं लगाया गया है बल्कि विभागों को आवश्यकता पड़ने पर अस्थायी रूप से दैनिक वेतन भोगी के रूप में लगाया गया इसलिए कामगार की श्रेणी में नहीं आता । प्रार्थी व अप्रार्थी के मध्य श्रमिक व नियोजक के सम्बन्ध स्थापित नहीं है । प्रार्थी ने कभी भी 21-6-97 से 21-7-98 तक लगातार वाहन चालक के रूप में कार्य नहीं किया बल्कि आवश्यकता पड़ने पर जिस दिन काम किया, उसका भुगतान उसे कर दिया गया । उसने कभी भी किसी भी कलेण्डर वर्ष में 240 दिन तक कार्य नहीं किया । अधिनियम के प्रावधान प्रार्थी पर लागू नहीं होते, अत: क्लेम निराधार होने से सव्यय निरस्त किया जावे ।

5. साक्ष्य में प्रार्थी श्रमिक ने स्वयं का तथा अप्रार्थी नियोजक की ओर से मिलापचन्द जैन, उपमण्डल अधि. तार का शपथ-पत्र प्रस्तुत कर परीक्षित करवाया गया है । प्रार्थी की ओर से प्रलेखिय साक्ष्य में वाहन लोग बुक की फोटोप्रतियां (प्रदर्श डबल्यू.1) लगा. डबल्यू. 26 प्रस्तुत कर प्रदर्शित करवायी गयी है, जबकि अप्रार्थी नियोजक की आरे से कोई प्रलेखिय साक्ष्य नहीं की गयी ।

6. दोनों पक्षों के विद्वान प्रतिनिधिगण की बहस सुनी गयी तथा पत्रावली पर उपलब्ध साक्ष्य तथा सामग्री का ध्यानपूर्वक परिसीलन किया गया ।

7. पक्षकारों के प्रतिनिधिगण ने अपनी बहस में उन्हीं तथ्यों को दोहराया है जोकि उनके द्वारा प्रस्तुत अपने-अपने अभ्यावेदनों में वर्णित किये गये हों ।

8. प्रार्थी श्रमिक के विद्वान प्रतिनिधि का तर्क है कि अप्रार्थी नियोजक ने प्रार्थी को दि. 21-6-97 से 31-7-98 तक अपने नियोजन में रखा तथा 31-7-98 को कार्योपरान्त मौखिक रूप से सेवा से पृथक कर दिया, इससे पूर्व उसे कोई नोटिस अथवा नोटिस वेतन व छंटनी मुआवजा नहीं दिया, ना प्रस्तावित किया । विद्वान प्रतिनिधि का यह भी तर्क है कि प्रार्थी श्रमिक ने 21-6-97 से 31-7-98 तक अप्रार्थी नियोजक के अधीन वाहन सं. आर.जे.8-सी-0350 पर चालक के पद पर कार्य किया तथा प्रार्थी ने अपने इस कार्य बाबत उक्त वाहन की लोगबुक की फोटोप्रतियां प्रदर्श डबल्यू.। . लगा डबल्यू. 26 को पेश किया है जिसे स्वयं अप्रार्थी गवाह ने भी स्वीकार किया है । प्रार्थी श्रमिक ने 240 दिन से अधिक दिवस तक लगातार कार्य किया है अत: प्रार्थी का सेवा से हटाना अनुचित एवं अवैध है तथा उसे समस्त लाभों सहित सेवा में पुनर्स्थापित किया जाए ।

9. अप्रार्थी नियोजक के विद्वान प्रतिनिधि ने इन तर्कों का विरोध किया है । उनका तर्क है कि प्रार्थी को कभी भी चालक के पद पर नियुक्त नहीं किया गया, उसे विभाग मे आवश्यकता पड़ने पर अस्थायी रूप से दैनिक वेतन भोगी के रूप मे लगाया गया था इसलिए वह "कर्मकार" (Workman) की श्रेणी में नहीं आता है । प्रार्थी से जब काम लिया जाता था उसका भुगतान किया जाता था । प्रार्थी ने 240 दिन लगातार कार्य नहीं किया इसलिए अधिनियम के प्रावधान लागू नहीं होते हैं । उनका यह भी तर्क है कि प्रार्थी ने जो प्रदर्श डबल्यू. । लगा. डबल्यू.26 लोगबुक की प्रतियां पेश की हैं उन पर मौका देखकर प्रार्थी ने एक ही दिन में शुरू से आखिर तक हस्ताक्षर कर दिये हैं जिनमें कई दिनों वाहन नहीं चलाने पर भी उसके हस्ताक्षर हैं । अत: प्रार्थी कोई अनुतोष का अधिकारी नहीं है ।

10. प्रार्थी ने क्लेम स्टेटमेन्ट में यह कथन दिया है कि अप्रार्थी नियोजक ने प्रार्थी को वाहन सं. आर.जी.08 सी-0350 पर ड्राईवर पद पर दैनिक वेतन 75 रु. पर दिनांक 21-6-97 से नियोजित (मौखिक रूप से) किया तथा 31-7-98 को मौखिक रूप से हटा दिया । उसने गाड़ी की लोगबुक पेश की है ।

11. अप्रार्थी नियोजक ने क्लेम के प्रत्युत्तर में कथन किया है कि प्रार्थी को चालक के पद पर नियोजित नहीं किया बल्कि दैनिक वेतन भोगी के रूप में 75 रु. प्रतिदिन पर जब आवश्यकता होती थी तब नियोजित कर कार्य समाप्ति पर नियोजक समाप्त कर देते थे । प्रार्थी ने जब तक कार्य किया उसका भुगतान कर दिया गया । प्रार्थी को सेवा से पृथक नहीं किया गया, प्रार्थी ने एक वर्ष में 240 दिन तक कार्य नहीं किया इसलिए अधिनियम के प्रावधानों का लाभ प्राप्त नहीं कर सकता ।

12. प्रकरण में प्रस्तुत अभिवचनों से प्रार्थी से दैनिक वेतन भोगी के रूप में चालक के पद पर कार्य लेना (engage करना) स्पष्ट होता है ।

13. अब विवादित यह रहता है कि क्या प्रार्थी ने एक वर्ष कार्य सम्पादन कर 240 दिन तक कार्य किया है तथा दैनिक वेतन भोगी को अधिनियम का लाभ प्राप्त होगा ?

14. धारा 2 (एस) अधिनियम में "कर्मकार" (Workman) की परिभाषान्तर्गत "शिक्षु" (Apprentice) के रूप में नियोजित को सम्मिलित किया गया है तथा न्यायादृष्टांत "2010 एल.एल.आर. 627(एस.सी.)-अनुपम शर्मा बनाम एक्जी. इंजीनियर" के पैरा 13 में उल्लेखित किया है कि "This court has used different empression for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without comply with the mandatory of Sec. 25-F of the Act."

इस न्यायदृष्टांत में "engagement" शब्द का प्रयोग कर स्पष्ट कर दिया कि नियोजन की प्रकृति विभिन्न प्रकार से हो सकती है जैसे-दैनिक वेतन भोगी, अस्थायी, बदली, प्रोबेशनर, शिक्षु (अप्रेन्टिश), स्थायी तथा यदि वे कर्मकार की परिभाषा में आते हैं तो उन्हें अधिनियम के प्रावधानों का लाभ प्राप्त होगा । इसलिए दैनिक वेतन भोगी श्रमिक को इस अधिनियम में दिये गये विधिक लाभ प्राप्त होगें ।

15. हस्तगत प्रकरण में अब यह देखना है कि क्या प्रार्थी ने अप्रार्थी नियोजक के नियोजन के अन्तर्गत एक वर्ष तक निरन्तर कार्य कर 240 दिन कार्य पर उपस्थिति दी ?

16. प्रार्थी श्रमिक ने व्यक्त किया कि दिनांक 21-6-97 से 31-7-98 तक उसने दैनिक वेतन भोगी के रूप में कार्य सम्पादन किया जो एक वर्ष से ज्यादा है । अप्रार्थी नियोजक ने, प्रार्थी ने कब से कार्य किया तथा कब तक कार्य किया या किन-किन दिनों में कार्य किया, व्यक्त नहीं कर मात्र इन्कार किया कि इस अवधि में कार्य नहीं किया । मात्र जब आवश्यकता होती थी कार्य लिया जाता रहा तथा उसका भुगतान किया जा चुका, परन्तु इस बाबत कोई दस्तावेजात प्रस्तुत नहीं किये गये ।

17. साक्ष्य में प्रार्थी श्रमिक ने स्पष्ट कथन किया है कि वह दिनांक 21-6-97 से 31-7-98 तक अप्रार्थी के नियोजन में कार्यरत रहा है जिसकी वाहन सं. आर जे. 08-सी-0350 की लोगबुक की फोटोप्रतियां पेश की हैं जिन पर उसके हस्ताक्षर हैं । उसका कथन है कि लोगबुक पहले दिन से ही भरना शुरू कर दी । प्रतिपरीक्षा में प्रार्थी का कथन है कि जो ओफिसर वाहन का उपयोग करता था, वह लोगबुक भरता था तथा उस पर वह भी हस्ताक्षर करता था । भुगतान के लिए एस.ए.70 स्लिप भरने पर भुगतान मिल जाता था । 6-6 दिन की स्लिप भरता था । प्रार्थी ने यह भी बताया है कि उसे श्री आर.एल. मीणा ने कार्य पर रखा था ।

18. अप्रार्थी नियोजक की ओर से गवाह मिलाप चन्द्र जैन, उस मण्डल अधिकारी (तार) 6-7-98 से उक्त पद पर पदस्थापित थे, ने अपने शपथ-पत्र में कथन किया है कि प्रार्थी ने कभी भी 21-6-97 से 21-7-98 तक लगातार गाड़ी नं.आर.जे. 08 सी-0350 पर वाहन चालक के रूप में कार्य नहीं किया: बल्कि प्रार्थी की सेवाओं की आवश्यकता पड़ने पर जिस दिन के लिए कार्य पर लिया है, उसका भुगतान दैनिक मजदूरी के रूप में उसे किया है । आगे गवाह ने अप्रार्थी द्वारा प्रार्थी को निष्कासित नहीं करना, प्रार्थी द्वारा 240 दिन तक कार्य नहीं करना, आवश्यकता पड़ने पर 75 रु. प्रतिदिन दिये जाने के आधार पर काम लेना,एक कलेण्डर वर्ष में 240 दिन तक लगातार कार्य नहीं किया जाना कथन किया है ।

इस गवाह अप्रार्थी ने मुख्य परीक्षण शपथ-पत्र में मात्र यही साक्ष्य दी है कि दिनांक 21-6-97 से 21-7-98 तक लगातार प्रार्थी ने गाड़ी नं. आर.जे.08 सी-0350 पर वाहन चालक के रूप में कार्य नहीं किया बल्कि प्रार्थी की सेवाओं की आवश्यकता पड़ने पर जिस दिन कार्य लिया उसका भुगतान 75 रू. प्रतिदिन के रूप में किया गया । इस कथन को प्रार्थी को साक्ष्य के साथ देखा जावे तो एक वर्ष पूर्ण हो जाता है ।

उक्त गवाह अप्रार्थी मिलापचन्द्र जैन ने प्रतिपरीक्षा में प्रदर्श डबल्यू. 1 लगा.डबल्यू. 22(लोगबुक) अर्थात् 2 पृष्ठ तक की एन्ट्री स्वीकार की है । गवाह का प्रतिपरीक्षण में स्पष्टत: कहना है कि गाड़ी की लोगबुक न्यायालय की पत्रावली पर प्रस्तुत है । प्रदर्श डबल्यू. 1 लगा. डबल्यू. 22 तक लोगबुक की प्रतियां हैं जो हमारे विभाग की हैं व हमारे विभाग के अधिकारियों के हस्ताक्षर हैं तथा श्रमिक के भी हस्ताक्षर हैं । इससे स्पष्ट होता है कि इस गवाह ने प्रदर्श डबल्यू. 1 लगा. डबल्यू 22 तक की लोगबुक को स्वीकार किया है । गवाह ने कहीं भी यह कथन नहीं किया कि प्रार्थी ने इन पर एक साथ हस्ताक्षर कर दिये अथवा कहीं भी इसके हस्ताक्षर का विरोध किसी अधिकारी द्वारा करना नहीं बताया गया । ऐसी स्थिति में ये प्रविष्टियां प्रमाणित मानी जाती हैं ।

वाहन पर ड्राइवर का कार्य ऐसा है जो प्रतिदिन किसी भी साक्ष्य किसी भी अधिकारी को वाहन की आवश्यकता हो सकती है, ऐसी स्थिति में प्रतिदिन उसकी उपस्थिति वाहन पर कार्य समय में रहना आवश्यक होता है तथा उसके हस्ताक्षर उसकी उपस्थिति का सूचक है एवं कभी भी किसी भी अधिकारी ने एतराज नहीं किया कि तो क्यों हस्ताक्षर करता है । ऐसी स्थिति में कार्यदिवसों की गणना की जावे तो प्रार्थी के कार्यदिवस 240 दिन से ज्यादा उपस्थित के होते हैं ।

19. उपरोक्त समस्त परिशीलन से यह स्पष्ट है कि लोगबुक अप्रार्थी नियोजक द्वारा स्वीकार करने पर तथा उसमें प्रार्थी के हस्ताक्षर मौजूद रहना, उसके कार्य पर "engage" रहने को साबित करता है इसलिए अप्रार्थी को आवश्यक था कि जब प्रार्थी ने 240 दिन तक निरन्तर उपस्थित रहकर सेवायें दी तो उसे सेवा से पृथक करने से पूर्व अधिनियम की धारा 25-एफ के प्रावधानान्तर्गत छंटनी मुआवजा दिया जाना आवश्यक था । धारा 25-एफ अधिनियम की पालना अप्रार्थी नियोजक द्वारा करने की कोई साक्ष्य अभिलेख पर नहीं है । अप्रार्थी साक्षी ने भी प्रतिपरीक्षा में प्रार्थी को कोई नोटिस अथवा नोटिस वेतन व छंटनी मुआवजा नहीं देना कहा है । अत: परिणामस्वरूप अप्रार्थी नियोजक द्वारा प्रार्थी श्रमिक को दिनांक 31-7-98 को कार्यान्वित सेवा से पृथक करना उचित एवं वैध नहीं है ।

20. अब जहां तक प्रार्थी श्रमिक के अनुतोष का प्रश्न है, प्रार्थी श्रमिक की अभिलेख पर लेशमात्र भी ऐसी साक्ष्य नहीं रही है कि वो सेवा पृथक उपरान्त बिलकुल बेकार बैठा रहा हो और उसने कहीं काम ढूंढने की कोशिश की हो परन्तु उसे कोई कार्य करने को नहीं मिला हो । वैसे भी प्रार्थी श्रमिक की कार्यप्रकृति वाहन चालक की रही है, ऐसी स्थिति में यह माना जाने योग्य है कि उसने सेवा पृथक उपरान्त कहीं इस प्रकार का कार्य कर अवश्य ही कुछ लाभार्जन किया होगा । यह भी स्पष्ट है कि प्रार्थी श्रमिक सेवा पृथक से पूर्व अप्रार्थी के यहां मात्र दैनिक वेतन भोगी के रूप में ही कार्यरत रहा था, ना कि उसकी किसी स्थायी पद के प्रति नियुक्ति की गयी थी । अत: प्रकरण के समस्त तथ्यों व परिस्थितियों को दृष्टिगत रखते हुए प्रार्थी श्रमिक को सेवा में पुन:स्थापित किये जाने के अनुतोष के बजाय क्षतिपूर्ति स्वरूप एकमुश्त 60,000 रु. की राशि ही अप्रार्थी नियोजक से दिलवाया जाना उपयुक्त समझा जाता है । परिणामत: भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा सम्प्रेषित निर्देश/विवाद को अधिनिर्णित कर इस प्रकार उत्तरित किया जाता है कि अप्रार्थी नियोजक टेलीकाम डिस्ट्रिक्ट इंजीनियर, टेलीकाम डिपार्टमेन्ट, बूँदी, राज., द्वारा प्रार्थी श्रमिक सत्यनारायण को दिनांक 31-7-98 को कार्योपरान्त सेवा से पृथक किया जाना उचित एवं वैध नहीं है । प्रकरण के तथ्यों तथा समस्त परिस्थितियों को दृष्टिगत रखते हुए प्रार्थी श्रमिक सेवा में पुन: स्थापना के अनुतोष के स्थान पर क्षतिपूर्ति स्वरूप एकमुश्त 60,000 रु. की राशि अप्रार्थी नियोजक से प्राप्त करने का अधिकारी घोषित किया जाता है ।

अनुराधा शर्मा, न्यायाधीश

नई दिल्ली, 17 सितम्बर, 2010

का.आ. 2580.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार राजस्थान एटोमिक पावर स्टेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोटा के पंचाट (संदर्भ संख्या -) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-9-2010 को प्राप्त हुआ था ।

[सं. एल-42011/36/2007-आईआर(डीयू)]

जोहन तोपनो, अवर सचिव

New Dehil, the 17th September, 2010

S.O. 2580.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal Kota, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Rajasthan Atomic Power Station and their workmen, which was received by the Central Government on 17-09-2010.

[No. L-42011/36/2007-IR(DU)]

JOHAN TOPNO, Under Secy.

अनुबन्ध

न्यायाधीश, औद्योगिक न्यायाधिकरण, कोटा/केन्द्रीय/कोटा/राज.

पीठासीन अधिकारी—अनुराधा शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक: ओ.न्या./केन्द्रीय/-6/07

दिनांक स्थापित: 8-8-07

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश सं. एल-42011/36/2007-आईआर(डीयू) दि. 28-6-07

निर्देश/विवाद अन्तर्गत धारा 10 (1) (ध) औद्योगिक विवाद अधिनियम, 1947

मध्य

आर. एस. राठौर द्वारा जनरल सेक्रेट्री, राज. अग्रशक्ति परियोजना कर्मचारी संघ (इन्टक), प्रताप सर्किल, पो. ओ. भाभानगर, कोटा

...प्रार्थी श्रमिक

एवं

साईट डायरेक्टर, राज. एटोमिक पावर प्लान्ट/स्टेशन यूनिट 1 से 6, रावतभाटा, कोटा

.....अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : उपस्थित नहीं

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री वी. के. जैन

अधिनिर्णय दिनांक: 20-08-2010

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के उक्त प्रासंगिक आदेश दिनांकित 28-6-07 के जरिये निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10 (1)(ध) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :-

> "Whether the demand of Rajasthan Anushakti Pariyojana Karamchari Sangh for grant of initial pay Scale of Rs. 5500—9000 and ACP in the pay Scale of Rs. 6500—10500 to Shri R. S. Rathore, is legal and justified? If yes, what relief the workman is entitled to ?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों की सूचना विधिवत रूप में जारी की गयी जिस पर दोनों पक्षों की ओर से अपनी-अपनी उपस्थिति दी गयी ।

3. पत्रावली के दौरान विचारण दि. 12-8-2010 को प्रार्थी अथवा उसकी ओर से अधिकृत प्रतिनिधि उपस्थित नहीं हुए बल्कि

उनकी ओर से श्री धनराज बैरवा ने उपस्थित होकर क्लेम पेश किये जाने का समय चाहे जाने बाबत निवेदन किया । पत्रावली के अवलोकन से यह प्रकट होने पर कि प्रार्थी पक्ष को क्लेम पेश किये जाने हेतु पूर्व में कई अवसर दिये गये हैं और उक्त दिवस की भी कोई युक्तियुक्त कारण क्लेम पेश नहीं दिये जाने बाबत नहीं बतलाया गया, इन तथ्यों को दृष्टिगत रखते हुए प्रार्थी के क्लेम पेश किये जाने का अधिकार समाप्त किया गया । उक्त तिथि को ही अप्रार्थी पक्ष की ओर से भी कोई जवाब व साक्ष्य पेश नहीं करना चाहा गया ।

दोनों पक्षों को सुना गया व पत्रावली का अवलोकन किया गया । स्पष्टत: प्रार्थी श्रमिक की ओर से इस मामले में कोई क्लेम स्टेटमेन्ट प्रस्तुत नहीं किया गया है, अर्थात् वो अपने मामले को न्यायाधिकरण के समक्ष साबित करने में पूर्णतया असफल रहा है, अत: अधिनियमान्तर्गत कोई संरक्षण प्राप्त नहीं होने से वह अप्रार्थी नियोजक से किसी अनुतोष का अधिकारी नहीं है और सम्प्रेषित निर्देश/विवाद को इसी प्रकार अधिनिर्णित कर उत्तरित किया जाता है ।

अनुराधा शर्मा, न्यायाधीश

नई दिल्ली, 17 सितम्बर, 2010

का.आ. 2581.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार राजस्थान एटोमिक पॉवर स्टेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोटा के पंचाट (संदर्भ संख्या -) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-9-2010 को प्राप्त हुआ था ।

[सं. एल- 42011/110/2007-आईआर(डीयू)]

जोहन तोपनो, अवर सचिव

New Dehil, the 17th September, 2010

S.O. 2581.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal Kota, as shown in the Annexure in the industrial dispute between the employers in relation to the management of Rajashan Atomic Power Station and their workmen, which was received by the Central Government on 17-09-2010.

[No. L-42011/110/2007-IR(DU)]

JOHAN TOPNO, Under Secy.

अनुबन्ध

न्यायाधीश, औद्योगिक न्यायाधिकरण,
कोटा/केन्द्रीय/कोटा/राज.

पीठासीन अधिकारी—अनुराधा शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक: ओ. न्या./केन्द्रीय/19/07

दिनांक स्थापित: 23-10-07

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश सं. एल.-42011/110/2007-आईआर-(डीयू) दि. 4-10-2007

निर्देश/विवाद अन्तर्गत धारा 10 (1) (ध) औद्योगिक विवाद अधिनियम, 1947

मध्य

के. एस. चौहान द्वारा जनरल सेक्रेट्री, राज. अनुशक्ति परियोजना कर्मचारी संघ (इन्टक) प्रताप सर्किल, पी. वो. भाभानगर, कोटा

...प्रार्थी श्रमिक

एवं

साईट डॉयरेक्टर, राज. एटोमिक पावर प्लान्ट यूनिट नं. 1 से 6, रावतभाटा, कोटा ।

.....अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : उपस्थित नहीं

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री वी. के.जैन

अधिनिर्णय दिनांक: 20-8-2010

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के उक्त प्रासांगिक आदेश दिनांकित 4-10-2007 के जरिये निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(ध) के अन्तर्गत इस न्यायाधिकरण को अधि निर्णयार्थ सम्प्रेषित किया गया है :—

"Whether the action of management of RAPP in denying permission to avail LTC to home town by own car, to their workman Shri K. S. Chauhan, is legal and justified? If not, to what relief the workman is entitled to ?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों की सूचना विधिवत रूप में जारी की गयी जिस पर दोनों पक्षों की ओर से अपनी-अपनी उपस्थिति दी गयी ।

3. पत्रावली के दौरान विचारण दि. 12-8-2010 को प्रार्थी अथवा उसकी ओर से अधिकृत प्रतिनिधि उपस्थित नहीं हुए बल्कि उनकी ओर से श्री धनराज बैरवा ने उपस्थित होकर क्लेम पेश किये जाने का समय चाहे जाने बाबत निवेदन किया । पत्रावली के अवलोकन से यह प्रकट होने पर कि प्रार्थी पक्ष को क्लेम पेश किये जाने हेतु पूर्व में कई अवसर दिये गये हैं और उक्त दिवस की भी कोई युक्तियुक्त कारण क्लेम पेश नहीं दिये जाने बाबत नहीं बतलाया गया, इन तथ्यों को दृष्टिगत रखते हुए प्रार्थी के क्लेम पेश किये जाने का अधिकार समाप्त किया गया । उक्त तिथि को ही अप्रार्थी पक्ष की ओर से भी कोई जवाब व साक्ष्य पेश नहीं करना चाहा गया ।

दोनों पक्षों को सुना गया व पत्रावली का अवलोकन किया गया। स्पष्टत: प्रार्थी श्रमिक की ओर से इस मामले में कोई क्लेम स्टेटमेन्ट प्रस्तुत नहीं किया गया है, अर्थात् वो अपने मामले को न्यायाधिकरण के समक्ष साबित करने में पूर्णतया असफल रहा है, अत: अधिनियमान्तर्गत कोई संरक्षण प्राप्त नहीं होने से वह अप्रार्थी नियोजक से किसी अनुतोष का अधिकारी नहीं है और सम्प्रेषित निर्देश/विवाद को इसी प्रकार अधिनिर्णित कर उत्तरित किया जाता है।

अनुराधा शर्मा, न्यायाधीश

नई दिल्ली, 17 सितम्बर, 2010

का.आ. 2582.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार राजस्थान एटोमिक पावर स्टेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोटा के पंचाट (संदर्भ संख्या -) को प्रकाशित करती है,जो केन्द्रीय सरकार को 17-9-2010 को प्राप्त हुआ था।

[सं.एल- 42011/18/2007-आईआर(डी.यू.]

जोहन तोपनो, अवर सचिव

New Delhi, the 17th September, 2010

S.O. 2582.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal Kota as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Rajasthan Atomic Power Station and their workmen, which was received by the Central Government on 17-09-2010.

[No. L-42011/18/2007-IR(DU)]

JOHAN TOPNO, Under Secy.

अनुबन्ध

न्यायाधीश, औद्योगिक न्यायाधिकरण,
कोटा/केन्द्रीय/कोटा/राज.

पीठासीन अधिकारी—अनुराधा शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक: ओ.न्या./केन्द्रीय/-4/07

दिनांक स्थापित: 6-7-2007

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश सं. एल-42011/18/2007(आईआरडीयू)दि. 26-4-07

निर्देश/विवाद अन्तर्गत धारा 10 (1) (ध) औद्योगिक विवाद अधिनियम, 1947

मध्य

पी. बी. शर्मा वगैरह कुल 3 श्रमिकगण
द्वारा राजस्थान अणुशक्ति परियोजना कर्मचारी संघ,
(ट्रंटक) रावतभाटा (कोटा)

...प्रार्थी श्रमिक

एवं

साईट डॉयरेक्टर, राज. ओटोमिक पावर स्टेशन,
यूनिट 1 से 6, रावतभाटा (कोटा)

.....अप्रार्थी नियोजक

उपस्थित

प्रार्थीगण श्रमिक की ओर से प्रतिनिधि : कोई उपस्थित नहीं

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री वी.के. जैन एवं श्री रमेश राठौर

अधिनिर्णय दिनांक: 12-08-2010

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के उक्त प्रासंगिक आदेश दिनांकित 26-4-2007 के जरिये निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :-

> "Whether the demand of Rajasthan Anushakti Pariyojna Karamchari Sangh for promotion of Shri P.B. Sharma, SRA Grade-II(P), Shri D.K. Sharma, SRA Grade-II(F&A) and Shri H.K. Chaturvedi SRA Grade-II(P) to the post of Sr. Asstt. Grade-I (L-4) in the pay scale of 6500-200-10500 is legal and justified? If so, to what relief the workmen are entitled to and from which date (s) ?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों की सूचना विधिवत रूप में जारी की गयी।

3. पत्रावली आज वास्ते पेश होने क्लेम स्टेटमेन्ट नियत थी, किन्तु प्रार्थीगण ना तो स्वयं उपस्थित हुए एवं ना ही उनकी ओर से क्लेम स्टेटमेन्ट प्रस्तुत किया गया। उनके प्रतिनिधि भी उपस्थित नहीं हुए बल्कि उनकी ओर से श्री धनराज बैरवा उपस्थित हुए जिन्होंने क्लेम पेश नहीं किये जाने बाबत कोई युक्तियुक्त कारण नहीं बतलाया। पत्रावली के अवलोकन से स्पष्ट है कि प्रार्थीगण दि. 3-3-2008 से अब तक कई अवसर ले चुके हैं तथापि आज दिन तक क्लेम स्टेटमेन्ट प्रस्तुत नहीं किया गया है, ऐसी स्थिति में अब समय दिया जाना उचित नहीं समझते हुए प्रार्थीगण के क्लेम पेश किये जाने का अधिकार समाप्त किया जाता है। अप्रार्थी प्रतिनिधि की ओर से भी कोई जवाब व साक्ष्य प्रस्तुत नहीं किया जाना प्रकट किया गया।

दोनों पक्षों को सुना गया व पत्रावली का अवलोकन किया गया जिससे स्पष्ट है कि प्रार्थीगण की ओर से पर्याप्त से भी अत्याधिक समय लिये जाने उपरान्त कोई क्लेम स्टेटमेन्ट प्रस्तुत नहीं किया गया है, अर्थात वो अपने मामले को साबित करने में पूर्णतया असफल रहें हैं। अत: अधिनियमान्तर्गत कोई संरक्षण प्राप्त नहीं होने से वे अप्रार्थी नियोजक से किसी अनुतोष के अधिकारी नहीं हैं और सम्प्रेषित निर्देश/विवाद को इसी प्रकार अधिनिर्णित कर उत्तरित किया जाता है।

अनुराधा शर्मा, न्यायाधीश

नई दिल्ली, 17 सितम्बर, 2010

का.आ. 2583.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं.-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 1051/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-9-2010 को प्राप्त हुआ था ।

[सं. एल-40012/87/2003-आई आर (डी.यू.)]

जोहन तोपनो, अवर सचिव

New Delhi, the 17th September, 2010

S.O. 2583.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1051/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Department of Post and their workmen, which was received by the Central Government on 17-9-2010.

[No. L-40012/87/2003-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: Sri A. K. Rastogi, Presiding Officer

Case No. I. D. No. 1051/2K5

Instituted on : 19-09-2005

Sh. Rajesh Kumar S/o. Sh. Krishan Lal, H. No. 31, Narain Nagar, Basti Sheokh Road, Jallandhar (Punjab).

.... Applicant

Versus

The Sr. Supdt. of Post Offices, Deptt. of Post, Post Office, Ludhiana.

... Respondent

APPEARANCES :

For the Workman : Sh. A. K. Batra, Advocate

For the Management : Shri K.K. Thakur, Advocate.

AWARD

Passed on 8th September, 2010

Government of India *vide* Notification No. L-40012/87/2003/IR(DU) dated 29-01-2004, by exercising its powers under Section 10 sub-section (1) Clause (d) and Sub-section (2A) of the Industrial Disputes Act, 1947 (hereinafter referred as the Act), referred the following industrial dispute for adjudication of this Tribunal :—

> "Whether the action of the management of Postal Department in terminating the services of Sh. Rajesh Kumar S/o Sh. Krishan Lal, Ex-Stamp Vendor w.e.f. 17-6-2002 without any payment of retrenchment compensation is legal and just ? If not, to what relief the concerned workman is entitled to and from which date ?"

The claimant has raised an industrial dispute stating that he was engaged as Stamp Vendor against a regular post in the Post Office in the Industrial Area-A, Ludhiana on 27-09-1999 where he worked up to 20-06-2002. At his request he was allowed further to work from 28-06-2002 to 30-06-2002 in L.R. Market Post Office, Ludhiana and further from 1-07-2002 to 17-09-2002. He completed 240 days service in 12 calendar months prior to his termination without any notice, notice pay or retrenchment compensation in violation of Section 25F of the Act first on 20-06-2002 and then on 17-09-2002. After his termination, management appointed a fresh person in his place in violation of Section 25H of the Act. He has prayed for his reinstatement with full back wages, continuity of service and interest.

The claim was contested by the management. It was stated that the claimant was engaged on a civil post and the dispute lies within the domain of Central Administrative Tribunal. It was further stated that the claimant was engaged as an outsider on daily wages on 27-09-1999 as E.D. Stamp Vendor purely on temporary basis till regular appointment was made on the said post. He was never appointed as Stamp Vendor. Later on Mrs. Paramjit Kaur widow of Sh. Gurdeep Singh Ex-Postman, PAU Post Office was appointed on her approval for appointment on compassionate grounds for the post of Gramin Dak Sewak. She joined as Gramin Dak Sewak/E.D. Stamp Vendor, Industrial Area-A, Post Office on 20-06-2002 and thus the local/provisional arrangement was terminated w.e.f. 20-06-2002. The claimant was thereafter engaged by Sub-Post Master, I.R. Market Post Office against Group D from 28-06-2002 to 30-06-2002 on daily wages and as outsider on daily wages for the period from 1-07-2002 to 17-09-2002 to work as E.D. Packer, Model Town on the risk and responsibility of Shri Sukhwinder Singh, regular E.D. Model Town Post Office on his deputation to L.R. Market Post Office. As the claimant was not appointed on regular basis his claim petition is liable to be dismissed.

In support of his case the claimant filed his affidavit and the management filed the affidavit of Manisha Bansal, Senior Superintendent of Post Office, City Division, Ludhiana and Sh. Dhanna Singh, Assistant Superintendent Post Office, SSPO, City Division, Ludhiana. Manisha Bansal did not appear to tender, her affidavit in evidence and for her cross-examination.

I have heard the learned counsel for the parties and also perused the record. It is important to note that the dispute under reference is about the termination of the services of the workman w.e.f. 17-06-2002 but in the pleadings and in evidence of the parties no termination on 17-06-2002 has been alleged. The admitted case of the parties is that the first stint of the employment of the claimant lasted up to 20-06-2002 and the second up to 17-09-2002. The workman has alleged in his claim statement that his services were terminated on 20-06-2002 and then on 17-09-2002. It is thus clear that his services were not terminated on 17-06-2002 as mentioned in the Schedule of the Order No. L-40012/87/2003 -IR(DU) dated 29-01-2004 of the Government of India, Ministry of Labour. This court cannot travel beyond the reference and on the basis of pleadings and evidence it is held that the services of the workman Rajesh Kumar were not terminated on 17-06-2002. The question of legality and justification of such a termination does not arise. The reference is accordingly answered. Let two copies of the award be sent to Central Government after due compliance.

A. K. RASTOGI, Presiding Officer

नई दिल्ली, 17 सितम्बर, 2010

का.आ. 2584.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गैरीसन इंजीनियर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-I, चंडीगढ़ के पंचाट (संदर्भ संख्या 179/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-9-2010 को प्राप्त हुआ था ।

[सं. एल-13012/2/98-आई आर (डी.यू.)]

जोहन तोपनो, अवर सचिव

New Delhi, the 17th September, 2010

S.O. 2584.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 179/98) of the Central Government Industrial Tribunal-Cum-Labour Court, No. I, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Garrison Engineer and their workmen, which was received by the Central Government on 17-9-2010.

[No. L-13012/2/98-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case I. D. No. 179/1998

Shri Ashok Kumar S/o Shri Hari Krishan, C/o Shri Gopal Arora, H. No. 3075, Sector-38-D, Chandigarh-160001

... Applicant

Versus

The Garission Engineer, M.E.S., Bhatinda-151 001.

... Respondent

APPEARANCES

For the Workman : Shri Gurbinder Singh

For the Management : Shri S. K. Sharma.

AWARD

Passed on 3-9-2010

Government of India vide notification No. L-13012/2/98-IR(DU). dated 11-08-1998 by exercising its powers under Section 10 of the Industrial Disputes Act, (the Act in short) has referred the following industrial dispute for adjudication to this Tribunal :—

> "Whether the action of the management or Garission Engineer, MES, Bhatinda Cantt. in terminating the services of Shri Ashok Kumar S/o Shri Hari Krishan as daily rated worker is legal and justified ? If not, to what relief the workman is entitled ?"

After affording the opportunity to both of the parties this Tribunal decided and answered the reference vide award dated 23-09-2004. The award was challenged by the management before Hon'ble High Court of Punjab and Haryana and Hon'ble High Court *vide* order dated 1-07-2010 quash the award in CWP No. 5427 of 2005. By the same order, Hon'ble the High Court remanded back the reference for disposal a fresh with the direction to decide the same expeditiously preferably within three months after affording the opportunity of evidence to both of the parties.

Both of the parties were directed to appear before this Tribunal on 10-08-2010 vide order dated 1-07-2010 passed in CWP No. 5427/2005. On 10-08-2010 only workman put in his presence, whereas, no one appeared on behalf of the management. Accordingly, this Tribunal passed a speaking order for proceedings exparte. On 17-08-2010 both of the parties appeared and on oral request of the management, management was also afforded the opportunity for adducing evidence, if any. Both of the parties prefer to rely the evidence already adduced and filed. In spite of affording the opportunity and adequate opportunity for adducing evidence, parties did not prefer to adduce/file any additional evidence in compliance of the order passed by Hon'ble High Court. Accordingly, evidence of both of the parties was closed. File was listed for hearing arguments for 23-08-2010. I have heard the arguments on 23-08-2010 and file was reserve for award.

Hon'ble High Court while deciding the CWP No. 5427/2005 on 1-07-2010 has relied upon the ratio of the decision rendered in CWP No. 18934/2005 passed by the Division Bench of Hon'ble High Court in the case of Shri Triyogi Pandit versus M.E.S., I. D. No. 178/98. The

case of the present workman Shri Ashok Kumar is similar to Shri Triyogi Pandit. The case of the Triyogi Pandit was remanded by Hon'ble High Court for disposal afresh after affording the opportunity of being heard. This Tribunal had adjudicated and answered the reference afresh in the case of Triyogi Pandit versus MES in ID No. 78/98.

During arguments learned representative of the management agreed that the case of Shri Ashok Kumar is similar to Triyogi Pandit. The only difference is only the date of appointment. Both of the persons namely Ashok Kumar and Triyogi Pandit were terminated on the same day. The grounds of termination were same and similar. That is the reason Hon'ble High Court has also directed this Tribunal to adjudicate the reference after affording the opportunity of being heard on the same ratio or Judgment of Hon'ble High Court passed regarding Triyogi Pandit.

It is the principle of judicial propriety that in similar cases the judgment should be similar. The judgment can vary where the facts and circumstances are different. In the case of similar facts and circumstances the judgment should be similar and same and Tribunal must try to prevent the divergence in judicial decisions. In similar facts and circumstances judicial conscious should not vary. As admitted by the parties that the case of Shri Ashok Kumar and Shri Triyogi Pandit are similar. Facts and circumstances in both of the case are same and similar. Accordingly, the case of Shri Ashok Kumar shall be answered and disposed off on the same approach and principle on which the case of Shri Triyogi Pandit was decided to prevent the divergence in judicial conscious and decisions.

Before raising the industrial dispute workman Shri Ashok Kumar along with few other persons including Shri Triyogi Pandit approached the Central Administrative Tribunal through OA No. 1209/ PV /90. The said OA was disposed off and dismissed in liminee on the ground that the workman along with other employees has not exhausted the remedy available under the Industrial Disputes Act, 1947. All the person's who were parties in the said OA were afforded the opportunity by the Central Administrative Tribunal to raise the industrial dispute before the appropriate forum. Against this order, three persons filed the SLP before the Supreme Court and the Supreme Court was kind enough to dismiss the SLP on the ground of delay and latches. On account of dismissal of SLP by Hon'ble the Supreme Court, the order passed by the Central Administrative Tribunal in OA No. 1209/PV/90 became final. Thereafter, the workman Shri Ashok Kumar raised the industrial dispute before ALC/Conciliation Officer, Chandigarh and on account of the failure of the conciliation report, the Central Government referred the industrial dispute to this Tribunal. The same was registered as 179/1998 and this Tribunal after affording the opportunity for adducing evidence answered and decided the reference vide award dated 23-09-2004 with a view that reference was bad for delay and latches. The award dated 23-09-2004 was challenged by the workman before Hon'ble High Court of Punjab & Haryana and Hon'ble High Court was kind enough to set aside the award and remanded back the reference for judicial adjudication afresh after affording the opportunity of being heard.

In the written statement the preliminary objection has been taken by the management that similar remedy and relief has been rejected by the Central Administrative Tribunal, Chandigarh Bench, vide order dated 20-09-1993 and the SLP filed against the said order has been dismissed by the Supreme Court. Thus, the order of the Central Administrative Tribunal become final and the workman is estopped to raise the same issue again before this Tribunal.

On perusal of the materials on record, I am enable to accept this contention of the management because Central Administrative Tribunal, Chandigarh bench dismissed the petition of the workman on the ground of maintainability on account of jurisdiction. However, the workman was put at liberty for availing the opportunity 'and appropriate remedy under the provisions of the Industrial Disputes Act, 1947 in accordance with law. Against this order, the workman filed SLP before the Supreme Court which was dismissed on account of delay and latches. The affect of dismissal of SLP by Hon'ble Apex Court will be that the order passed by the CAT dated 20-09-1993 become final for non-maintainability of the petition on the ground of jurisdiction before the Central Administrative Tribunal.

As stated earlier, this Tribunal in present award dated 23-09-2004 rejected the claim of the workman on the ground of delay and latches but the award passed by this Trihunal dated 23-09-2004 was set aside by Hon'ble the High Court of Punjab & Haryana directing this Tribunal for adjudicating the reference afresh. As per the statement of claim of the workman, he was appointed by the management on 27-11-1984 and was drawing salary of Rs. 1200 plus allowances and his services were terminated on 30-01-1987 along with 90 other workman without issuing any notice or without payment of one month wages in lieu of notice and without payment of lawful terminal dues. The termination of the workman, as per his contention was illegal being against the provisions of the Act.

On the other hand, the management by filing the written statement raised objections regarding the maintainability or the claim petition before this Tribunal for the reasons that MES Pathankot Cantt. is not an industry and there is no relation between the workman and the respondent which can be termed as employer-employee relation. As the dispute between the two is not an industrial dispute, it cannot be adjudicated by this Trihunal. Apart from it, it has also been mentioned that the workman has not worked for a period of 240 days in the preceding year from the date of his termination and no other junior workmen kept in service. Both of the parties were afforded

opportunity for adducing evidence. They did so. I have heard learned counsels for the parties and perused the entire materials on record. The main questions for determination before this Tribunal in the present reference are :—

(1) Whether the Garrison Engineer, MES is an industry and the dispute between the workman and the management of respondent is an industrial dispute?

(2) Whether the workman is entitled for the relief sought in his statement of claim?

The term 'industry' has been defined in section 2 (j) of the Industrial Disputes Act, 1947 to mean any business trade, undertaking , manufacture or calling or employers and includes any calling, services, employment, handicraft, or industrial occupation or avocation of workmen.

In Bangalore Water Supply and Sewerage Board versus A. Rajappa and others AIR 1978 Supreme Court 548, 7 Judges Bench of Hon'ble the Apex Court has defined the word industry. As per the above mentioned law laid down by the Apex Court, industry has defined in sub-section 2 as a vide import as :—

(a) Where there is (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), and (iii) for the production and/or distribution or goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss), prima facie, there is an industry in the enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is trade or business it does not cease to be one because of philanthropy animating the undertaking.

Thus, the test (especially triple test) referred by the Hon'ble the Apex Court in Bangalore Water Supply Case (supra) are necessary to qualify any institution to be an industry.

Regarding sovereign functions Hon'ble the Apex Court in Bangalore Water Supply Case (supra) held that sovereign functions strictly understood alone does not qualify exemption, nor the welfare activities or economic adventures undertaking by Government of statutory body. Even in departments discharging sovereign functions, if there are units which are industries and they are substantially sevegral then they can be consider to come within section 2(j).

Thus, the decision whether the particular organization is an industry or not is to be taken by the work done and business carried on by it which absolutely depends on the facts and circumstances of each case. Admittedly, the main work of the management of MES are the provisions for buildings, docks, airfields etc. together with accessory services, such as roads, electric and water supply, drainage, furniture etc. and internal fixtures generally maintenance services, i.e, repairs renewal and upkeep of worked as maintenance and operation of certain installations such as electric power stations, pumping stations, sewerage disposal works, hiring and payment of rent, rates and taxes in respect of lands and buildings, railways and the payment of bills for electronic energy. The MES is also supposed to do the furnishing of necessary particulars to enable them to collect rent for quarters and charges for furniture electric and water etc. All the above mentioned functions cannot be termed strictly as the sovereign functions carried on by the department. Some of the above mentioned functions are welfare activities and economic adventure undertaken by the MES on behalf of the Government of India. Without commenting on the sovereign identity of few functions of the MES, I am of the view, that other major functions, as stated earlier, are related to the welfare activities and economic adventure which cannot be termed strictly as the sovereign functions. As per the law laid down by the Hon'ble Apex Court in Bangalore Water Supply Case (supra) even in departments discharging sovereign functions, if there are units which are industries and they are substantially several, it may qualify for industry. As stated earlier, major functions of the respondent MES are the welfare activities and economic adventures which are certainly substantially severgral then the other functions which can be said to be.the sovereign functions. On the basis of the above mentioned observations, I am of the view that MES, the respondent, is an industry for the purpose of adjudication of this reference.

The next question for determination before this Tribunal is whether this Tribunal is competent to adjudicate the reference. In his written argument in para no. 9 onwards learned counsel for the management of respondent has emphasized that the proper remedy available to the workman has been to file the petition before the Central Administrative Tribunal, I am unable to accept the contention of the learned counsel for the management on two grounds :—

(1) The Central Administrative Tribunal, Chandigarh Bench has in a petition filed by the workman held that the proper remedy lies in the Industrial Disputes Act and the order of

the Tribunal was final on account of dismissal of SLP by Hon'ble the Supreme Court against the said order dated 20-09-1993. Thus, on direction of the Central Administrative Tribunal, the workman raised the industrial dispute and on account of failure of conciliation proccedings the same was referred to this Tribunal for judicial adjudication.

(2) As stated earlier, that respondent is an industry on the basis or the activities carried on by it. The nature of appointment or the applicant also shows that he is a workman as defined in the Industrial Disputes Act, and the dispute between the workman and the respondent is an industrial dispute. This Tribunal has jurisdiction to adjudicate the industrial dispute between the workman and the management as per the provisions of the Industrial Disputes Act, and it cannot be said that the remedy lies before the Central Administrative Tribunal.

Thus, on both of the above mentioned grounds, I am or the view that this Tribunal is empowered and competent to adjudicate this reference.

Now, the question arise whether the workman is entitled for the relief sought in his statement of claim which is on the basis or the reference referred by the Central Government.

It is contended by the workman that he has worked continuously for 240 days in a calendar year prior to the date or his termination. It has not specifically been denied by the management but it has only been stated that he has not worked 240 days in a calendar year. The requirement of law is continuous working for 240 days in a previous calendar year preceding to the date or his termination and not complete year. On perusal of the materials on record and on the casual view taken by the management and proved by the workman by his affidavit and documentarry evidence exhibit mark A, I am of the view that the workman has completed 240 days of work in the preceding year before the date or his termination. Exhibit mark A is the certificate provided by the department to the workman regarding his work and conduct in which it is mentioned that :—

"It is certified that Shri Ashok Kumar S/o Shri Hari Kishan had been working as wireman from 27-11-1984 to 03-01-1987 in MES department on muster roll. During the period his working in MES, I found him honest, hard worker."

This certificate is given by Colonel R.N. Hora on 24-01-1987 and it was counter signed by Virender Kumar, Major Garrison Engineer. The witness of the management Major Grish Kumar MW I has shown his ignorance about the authority to issue the certificate and counter-signed it. But his doubt cannot nullify the issuance of this certificate which proved that Ashok Kumar worked in the department continuously from 27-11-1984 to 03-01-1987. Thus, it is proved that the workman was initially lawfully appointed. He has completed 240 days of work in the preceding calendar year from the date of his termination he was not given any notice or retrenchment compensation before his termination which makes his termination illegal being against the provisions of the Act.

It has also brought to the notice of this Tribunal that in the similar circumstances regarding the co-workers, Hon'ble the Apex Court' has directed the department to reinstate their services within one month from the date of the order. I have gone through the judgment of the Hon'ble Apex Court which is on record. The matter before the Hon'ble apex Court was same as that of the present workman.

Accordingly, on both of the grounds namely that the workman has proved that he has completed 240 days of work in the preceding calendar year from the date of his termination and his termination is void and illegal being against the provisions of the Industrial Disputes Act, and secondly, that Hon'ble the Supreme Court in the similar circumstances has directed the management to reinstate the workman in the service on the same position he was holding at the time of his termination, I am of the view that the services of the workman should be reinstated within one month from the date of publication of the award without any benefit or back wages. Accordingly, the management is directed to reinstate the workman within one month from the date of publication of the award. However, it is made clear that the workman will not be entitled for any back wages. The reference is answered accordingly Central Government be approached for publication of the award, and thereafter, file be consigned to record room.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 17 सितम्बर, 2010

का.आ. 2585.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 26/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-9-2010 को प्राप्त हुआ था ।

[सं. एल-40012/147/2003-आई आर (डी.यू.)]

जोहन तोपनो, अवर सचिव

New Delhi, the 17th September, 2010

S.O. 2585.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 26/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the

Industrial Dispute between the employers in relation to the management of Garrison Engineer and their workmen, which was received by the Central Government on 17-9-2010.

[No. L-40012/147/2003-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 26/2004

Date of Passing Order—3rd Septmeber, 2010

Between :

The Management of the Senior Superintendent of Post, Department of Post, Berhampur, Dist. Ganjam, Orissa.

. . . 1st Party-Management.

Versus

Their workman Shri Man Mohan Pradhan, At./Po. Baghala, Via-Balakumarada, Dist. Ganjam, Orissa.

2nd Party-Workman.

Appearances :

None For the 1st PartyManagement.

None For the 2nd PartyWorkman.

AWARD

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of Department of Post and their workmen vide their letter No. L-40012/147/2003-IR(DU), dated 23-4-2004 in exercise of the powers conferred by clause (d) of sub-section (1) and sub section (2-A) of Section 10 of the Industrial Disputes Act 1947. The dispute as referred is mentioned under the schedule which reads as follows :—

"Whether the demand of the workman, Shri M.M. Pradhan, for reinstatement after completing 240 days of continuous service on leave vacancy is legal and justified? If yes, what relief he is entitled to?"

2. The order of reference called the parties raising the dispute to file statement of claim complete with relevant documents, list of reliance and witnesses within 15 days of the receipt of the reference, in compliance of which the 2nd Party-workman filed the statement of claim in which he has stated that he was appointed against a leave vacancy post of Post Master at Laxmipur for a period from 1-2-2001 to 21-6-2002. He completed 240 days continuous service and received pay and allowances by signing the acquaintance roll of the Department for the aforesaid period. To his surprise his services were discontinued without giving any notice. He raised an Industrial Dispute before the Asst. Labour Commissioner (Central), Bhubaneswar which ended in failure as the 1st Party-Management did not accede, to the demands of the workman. Therefore, the reference was made to this Tribunal for adjudication of the dispute with regard to his reinstatement as he has rendered 240 days continuous service in a year. He is entitled to be reinstated in service with full back wages.

3. The 1st Party-Management filed written statement in which it has been stated that the disputant was never appointed by the Department against any vacant post. The fact is that the father of the disputant is a regularly appointed GDS official of the department. As per the GDS Employment and Service Rules 2001 (EDAs conduct & service Rules 1964), regularly employed GDS official can proceed on leave by submitting leave application and providing a suitable substitute to work in his place during his leave period. The disputant's father Shri Bata Krushna Pradhan proceeded on leave providing his son Shri M.M. Pradhan as his substitute. Therefore, the statement that the disputant was appointed and later terminated is all false and bogus. The regular employee returning from leave will automatically occupy his post replacing his substitute. When the disputant was not a regularly appointed employee of the department, but mere a substitute, how can he claim reinstatement. Therefore, the case deserves to be dismissed.

4. After filing of the statement of claim by the 2nd Party-workman and written statement by the 1st Party-Management the parties, absented themselves from coming to the Tribunal/Court, though several dates were fixed and notices were sent to the parties time and again. None of the parties has filed any documentary or oral evidence in support of one's respective version of the case. It seems that the parties have lost their interest in contesting the case. This is fortified by a letter kept on the file and received in this Tribunal through registered post sometime in the month of June 2007 which has escaped notice of the Tribunal. The letter states that the 2nd Party-workman has settled the dispute outside the court and does not want to proceed further with the case.

5. In view of the settlement of the dispute outside the court there remains nothing to be adjudicated upon by this Tribunal and the reference is liable to be decided without any relief either to the 2nd Party-workman or to the 1st Party-Management as there exists no dispute between the parties.

6. Reference is answered accordingly.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 सितम्बर, 2010

का.आ. 2586.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेन्ट ऑफ पोस्ट ऑफिस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं.-I, चंडीगढ़ के पंचाट (संदर्भ संख्या 14/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-9-2010 को प्राप्त हुआ था ।

[सं. एल-40012/44/2008-आई आर (डी.यू.)]

जोहन तोपनो, अवर सचिव

New Delhi, the 17th September, 2010

S.O. 2586.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 14/2008) of the Central Government Industrial Tribunal-Cum-Labour Court, No. I Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Senior Superintendent of Post Office and their workmen, which was received by the Central Government on 17-9-2010.

[No. L-40012/44/2008-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

Before Shri Gyanendra Kumar Sharma, Presiding Officer, Central Govt. Industrial Tribunal- cum- Labour Court-I, Chandigarh.

Case I. D No.-14/2008

Shri Paramjit Singh S/o Shri Mohan Singh
C/o Shri R. K. Singh Parmar, General Secretary,
Punjab INTUC, Partap Nagar, Nangal Dam, Ropar.

...Applicant

Versus

The Senior Superintendent of Post Offices, D/o Posts, Hoshiyarpur.

...Respondent

APPEARANCES

For the Workman : Shri R. K.Singh.

For the Management : Shri A. S. Pahuja.

Award

Passed on : 3-9-2010

Government of India vide notification no. L-40012/ 44/2008 I R(DU), dated 2-3-2009 by exercising its powers under Section 10 or the Industrial Disputes Act, (the Act in short) has referred the following Industrial dispute for adjudication to this Tribunal :—

> "Whether the action of the management of Sr. Supdt. of Post Office, Iloshiarpur, in terminating the services of their workman Shri Paramjit Singh w.e.f. 16-4-2007 is legal and justified? If not, what relief the workman is entitled to?"

After receiving the reference, parties were informed. Parties appeared and filed their respective pleadings. The case of the workman in nut shell is that he was selected and appointed as DEM, GDS, Village Mozowal Mazra, District Hosiyarpur w.e.f. 06-10-2004 and was continuously employed as such till 16-04-2007. He has worked more than 240 days or service in every calendar year with the management. His services were illegally terminated on 16-04-2004 without notice, one month wages in lieu of notice and without payment of retrenchment compensation. One Shri Rampal S/o Shri Ramsavrup was appointed after the termination of his services against the provisions of the Act. On the basis of the above contentions the workman has prayed for setting aside the termination order and for an order reinstating him into the services with consequential benefits.

Management appeared and opposed the claim of the workman by filing written statement. It has been the contention of the management that on retiremcnt of DEM, Mozowa Mazra on 14-11-2002, the workman Paramjit Singh S/o Shri Mohan Singh was engagcd as GDS DPM Mozawal on purely temporary basis on thc condition that his services werc subject the termination at the timc as and when required by the department. One of the condition in the appointment letter was that his scrvices shall he terminated on joining thc new incumbent. The management has mentioned the entire period rendered by thc workman on scveral appointment letters issued from time to time.

The management has also contended that it was a temporary appointment and temporary appointment has no right to post. It was further more contended by the management that one Shri Rampal S/o Shri . Ramsavroop was appointed as per the rules of the department permanently against the post.

Both of the parties were afforded the opportunity for adducing evidence. Oral and documentary evidence is on record. On perusal of the several appointment letters and charge certificates, I am of the view that workman was appointed by the management on temporary basis. The work and conduct of the workman was good. Thus, he had a right to continue with the work till the regular incumbent was not appointed.

It is settled principle of service jurisprudence that temporary appointee has no right to post. Law prefers the regular appointment and it is the exigency of work the temporary appointment as stopgap arrangement can be made. It is clear from the pleadings and evidence on record that on retirement of an employee of the management, in exigency of work, temporary appointment was made and the workman was asked to discharge the work on certain conditions. Such temporary appointment cannot be treated as a permanent appointment. Such temporary appointment can be regularized or the person holding such temporary

appointment can be appointed against any post as per the rules of the department. It is not an absolute right of the workman that he must be selected to the post. It is not the intention of the legislature. Legislature provides that a post should be open to every citizen of India having desired qualifications. If the post is given to the temporary appointee, the rights of other candidates shall be violated. Thus, management has rightly appointed another person on regular appointment as per rules. The virus of appointment of Shri Rampal S/o Shri Ramsavroop is not and cannot be the subject matter in dispute before this Tribunal. It is not denied that appointment of Rampal was against the post as per the rules.

Instead of that, it was vested right of the workman to continue with the work till the regular incumbent has joined the services. As per the evidence of the management, the services of the workman were terminated before six months of the regular appointment. There was no reasonable cause for terminating the services of the workman before six months from the date when regular incumbent joins the services. May be services were provided with, the workman by several appointment letters but it is the settled law that when the work is available continuously and number of appointment are given with notional breaks, it is unlawful labour practice. The workman has a right to continue to work till the work ceases. There were no complaints regarding the work and conduct of the workman and he was lawfully discharging his functions. Thus, the workman was illegally terminated before six months. As he was not having right to post so this Court cannot consider for the regularization or for his reinstatement into the services because the department has made the regular appointment against the post. Workman has only entitled for the six months wages for his illegal termination before six months. As per the statement of the workman, he was getting Rs. 2,368 at the time or his termination. Thus, workman shall be entitled Rs. 14,208 as compensation on account of his illegal termination before six months. The management is directed to pay the above amount within one month from the date of publication or award. If the management complied with the order no interest need to be paid failing which workman shall also be entitled for an interest at the rate of 8 per cent per annum from the date of filing the claim petition till final payment. The industrial dispute is accordingly, answered. Let Central Government be approached for publication of the award, and thereafter, file be consigned to record room.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 17 सितम्बर, 2010

का.आ. 2587.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडीकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय एरनाकुलम के पंचाट (संदर्भ संख्या 10/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-9-2010 को प्राप्त हुआ था ।

[सं. एल-12011/126/2007-आई आर (बी-II)]

पुष्पेन्दर कुमार, डेस्क अधिकारी

New Delhi, the 17th September, 2010

S.O. 2587.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2008) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure, in the Industrial Dispute between the employees in relation to the management of Syndicate Bank and their workmen, which was received by the Central Government on 17-9-2010.

[No. L-12011/126/2007-IR (B-II)]

PUSHPENDER KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri.P.L.Norbert, B.A., LL.B., Presiding Officer

Monday the 30th day of August, 2010/8th Badrapadham, 1932

I.D. 10/2008

Union : The State Secretary,
Syndicate Bank Employees Union,
Kerala State Committee,
Kandathil Building,
Thirunakkara West, Kottayam.

By Adv. Sri. Ajith S. Nair.

Management : The Regional Manager,
Syndicate Bank, Regional Office,
Sasthakripa Complex, Sasthamangalam,
Trivandrum-695 010.

By Adv. Sri. M.P. Ashok Kumar.

This case coming up for hearing on 30-08-2010, this Tribunal-cum-Labour Court on the same day passed the following.

AWARD

This is a reference under Section 10 (1)(d) of Industrial Disputes Act challenging the disciplinary action resulting in dismissal of the workman from service.

2. On reference both sides entered appearance and filed their pleadings. When the case was posted for evidence of the management the union and counsel remained absent. The Enquiry Officer was examined in chief as MW 1 and enquiry file was marked as Ext. M 1 on the management side. The union has been remaining absent, but had filed a petition to examine the workman. But there is no scope for adducing evidence on the side of the workman unless the enquiry is found vitiated. The evidence on the management side remains unchallenged. Therefore there is no reason to hold that either the enquiry is invalid or the findings are perverse.

In the result an award is passed finding that the action of the management in dismissing the workman Smt. B. Latha from service is legal and justified and she is not entitled for any relief.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 30th day of August, 2010.

P. L. NORBERT, Presiding Officer

Appendix

Witness for the union — Nil.

Witness for the Management

MW1—R. Venkataraman, Enquiry Officer.

Exhibit for the union — Nil.

Exhibit for the management

M1 — Enquiry File.

नई दिल्ली, 17 सितम्बर, 2010

का.आ. 2588.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय एरनाकुलम के पंचाट (संदर्भ संख्या 31/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-9-2010 को प्राप्त हुआ था ।

[सं. एल-12012/65/2007-आई आर (बी-II)]

पुष्पेन्दर कुमार, डेस्क अधिकारी

New Delhi, the 17th September, 2010

S.O. 2588.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 31/2007) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure, in the Industrial Dispute between the employees in relation to the management of Indian Overseas Bank and their workmen, which was received by the Central Government on 17-9-2010.

[No. L-12012/65/2007-IR (B-II)]

PUSHPENDER KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri.P.L.Norbert, B.A., LL.B., Presiding Officer

Monday the 30th day of August, 2010/8th Badrapadham, 1932)

I.D. 31/2007

Workman : K. Unnikrishnan Nair,
Thekkedath House,
Ayyarkulangara,
Vaikom, Kottayam District
Kerala - 686 142.

By Adv. Shri. Y. Sreekumar.

Management : The Chairman-cum-Managing Director, Indian Overseas Bank, Head Office, P.B.No. 3765, Chennai - 600 002.

By Adv. Shri. V. Philip Mathew.

This case coming up for hearing on 30-8-2010 this Tribunal-cum-Labour Court on the same day passed the following

AWARD

This is a reference under Section 10 (1)(d) of Industrial Disputes Act challenging the dismissal from service. As per preliminary order dated 26-6-2010 the enquiry was found invalid. Thereafter the case was posted for further steps of the management. However the management has not taken any further steps to adduce fresh evidence and prove the charges levelled against the workman. Today the management as well as the counsel are absent. The workman is present. Since the enquiry stands vitiated due to violation of the principles of natural justice and since there is no material before this court to substantiate the charges the workman cannot be found guilty of any misconduct.

In the result an award is passed finding that the action of the management in discharging Sri. K. Unnikrishnan Nair from service is illegal and unjustified and he is entitled to be reinstated with backwages and all consequential benefits.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 30th day of August, 2010.

P. L. NORBERT, Presiding Officer

Appendix

Witness for the workman — Nil.

Witness for the Management

MW1—L. Ramamoorthy, Enquiry Officer.

Exhibit for the Workman — Nil.

Exhibit for the management

M1 — Enquiry report and proceedings (original).

M1(a) — Documents, enquiry proceedings (copy) and enquiry report (copy).

नई दिल्ली, 20 सितम्बर, 2010

का.आ. 2589.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग, बी.एस.एन.एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं.-I, नई दिल्ली के पंचाट (संदर्भ संख्या 98/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-9-10 को प्राप्त हुआ था ।

[सं. एल-40012/254/2001-आई आर (डी.यू.)]

जोहन तोपनो, अवर सचिव

New Delhi, the 20th September, 2010

S.O. 2589.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 98/2001) of the Central Government Industrial Tribunal-Cum-Labour Court No. I New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Department of Telecom, BSNL and their workmen, which was received by the Central Government on 20-9-2010.

[No. L-40012/254/2001-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 98/2001

Shri Mohan Kumar S/o Shri Mani Ram,
R/o 97, Harvanshwala, Post Mahuwala,
District Dehradun,
Dehradun (Uttrakhand). ... Workman

Versus

The Chief General Manager, Telecom
Distt. Dehradun,
Dehradun-243001. ... Management

AWARD

A guest house is being run at Patel Nagar Telephone Exchange, Dehradun, by officers working in the office of General Manager, Telecommunication Department, B.S.N.L., Dehradun. A casual employee is kept at the said guest house to work as its Caretaker. Shri Mohan Kumar worked as Caretaker at the said guest house for certain period. When services of Mohan Kumar were disengaged, Shri Uttam Singh worked as Caretaker in the said guest house from 19-2-97 till 14-5-99. Mohan Kumar managed to tkae away registers kept at the said guest house. Thereafter he filed a writ petition before Allahabad High Court, which was disposed of on 30-8-2000, with a direction to Chief General Manager, Western U.P., Telecom Circle, Dehradun, to dispose of representation dated 20-9-99 moved by Shri Mohan Kumar. The said representation was disposed of When Mohan Kumar could not get favourable answer to his representation, he raised a dispute before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-40012/254/2001-IR(DU) New Delhi, dated 18-12-2001, with following terms :

> "Whether the action of the management of B.S.N.L. Dehradun in terminating the services of Mohan Kumar S/o Mani Ram Ex-Caretaker w.e.f. 4-11-99 is justified and legal ? If not to what releif the workman is entitled ?"

2. Claim statement was filed by Shri Mohan Kumar pleading that he was appointed as Caretaker by Sub Divisional Engineer, B.S.N.L., E-10B, Patel Nagar Exchange, Dehradun, (in short the management) on 10-6-95. He served the management continuously upto 4-11-99. His services were terminated thereafter by an oral order. No disciplinary action was ever initiated against him. No notice or pay in lieu thereof or retrenchment compensation was paid to him. He is unemployed since date of termination of his service. Action of the management is against the principles of law. He seeks reinstatement in service with continuity and full back wages.

3. Claim was resisted by the management pleading that the claimant worked at the guest house from July 1995 to May, 1996 on contract basis. He worked under Sub-Divisional Engineer, P-10B, Dehradun. The management disputes that he continuously worked from 10th of June, 95 till 4th of November, 1999. Since he was not a regular employee there was no question of serving notice and payment of retrenchment compensation.

4. The management unfolds that he filed a writ petition before Allahabd High Court bearing No. WC-36593 of 2000 seeking regularization of his services. In the said writ petition he asserted that his representation dated 20-9-99 pends adjudication. Though no such representation was ever made by him, yet High Court directed the management to decide his representation by way of speaking order and disposed of his writ petition accordingly. He was called upon to present facts and thereafter his representation was disposed of. There is no case in favour of the claimant to seek reinstatement in service. His claim is devoid of merits, hence it may be dismissed.

5. On 24-6-2003 a no dispute award was passed by this Tribunal, since the claimant opted to abandon the proceedings w.e.f. 9-4-2003. A writ petition bearing W.P.

No. 1427 of 2005 (MS) was preferred against the said award before Uttaranchal High Court, which was vide order dated 27-4-2006. No dispute award was thus quashed by High Court of Uttaranchal.

6. Claimant has examined himself (WW1) and Shri Uttam Singh (WW2) in support of his claim. Shri P. K. Sharma, Sr. Sub-Divisional Engineer (MW1) was examined on behalf of the management. No other witness was examined by either of the parties.

7. Arguments were heard at the bar. Ms. Saraswati Bhardwaj, authorised representative, advanced arguments on behalf of the claimant. Shri A. K. Gupta, authorised representative, raised his submissions on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :—

8. Shri Mohan Kumar had testified that he was appointed on 10-6-95 as Caretaker in guest house located at Telephone Exchange Building, Dehradun. He was paid @ Rs. 1000 P.M. He was assured that his services would be regularized. He worked at the said guest house till 9-11-99. He had not availed any leave till 9-11-99. In November 99, he requested the management for regularization of his job. On 7-12-2000, he moved an application for regularization. Thereafter his services were terminated. In discharge of his duties as Caretaker, he used to maintain a register. He used to record names of guests in the register, who used to stay in the guest house. Registers Ex.WW1/A, Ex.WW1/B and Ex.WW1/C were maintained by him. In register Ex.WW1/A entries from 18-4-96 to 4-7-96 are recorded, while in register Ex.WW1/B entries from 1-4-96 to 8-1-97 are recorded and entries from 23-6-98 till 9-6-98 are recorded in register Ex.WW1/C. He worked continuously with the management. No notice or pay in lieu thereof was given to him, at the time of termination of his services. No retrenchment compensation was paid to him. He sent down and letter Ex.WW1/1 on 7-11-2000. Reminder Ex.WW1/2 was sent on 4-12-2000. During the course of his cross examination, he projects that his services were terminated by Shri R. P. Singh, Sub-Divisional Engineer. He concedes that in registers Ex.WW1/A, Ex.WW1/B and Ex.WW1/C signatures of Shri Singh does not appear. He further concedes that no application is there on record, on the strength of which he sought regularization of his job. He highlights that registers Ex.WW1/A, Ex.WW1/B and Ex.WW1/C were taken away by him at the time of termination of his services. He concedes that as per contents of visitor register Uttam Singh was working as Caretaker from 18-7-97 to February, 98. He further concedes that in register Ex.WW1/C payment was made on 26-11-98 to Uttam Singh, Caretaker. He hastens to add that Uttam Singh was working as helper with him.

9. Uttam Singh swears in his affidavit Ex.WW2/A that he worked as Assistant Caretaker in the guest house from 19-2-97 till May, 1999. Shri Mohan Kumar was working as Caretaker and drawing Rs. 1200 PM as his wages. He presents during the course of his cross examination, that he was getting Rs. 1000 PM as his wages. Shri S. C. Gupta was in-charge of the guest house in those days, when he was working there. He concedes that his signatures appear on various pages of register Ex.WW1/B, as a token of the fact that he had worked there. He present that on 14-5-99 he had left registers Ex.WW1/A, Ex.WW1/B and Ex.WW1/C in the guest house.

10. Shri P.K. Sharma swears in his affidavit Ex. WW1/A that Mohan Kumar worked in the guest house from July, 95 till May, 96. Mohan Kumar added his name and signatures in the registers, after removing it from the guest house. Mohan Kumar had not worked in the guest house after May,96. Claimant was removed from the job in 1996. He used to prepare food and tea for guests, who used to stay in the guest house.

11. When facts testified by rival parties are appreciated, it came to light that in the guest hosue, being run at Patel Nagar Telephone Exchange, Dehradun, the management used to employ a casual labour who used to work as Caretaker. The Caretaker used to prepare food and tea etc. for guests. Expenses incurred by him in that regard were reimbursed. Management projects that the claimant worked in the said guest house from July, 95 to May, 1996. Contra to it, claimant asserts that he served the management from 10-6-95 till 4-11-99. As per his own admission, the claimant had taken away registers Ex.WW1/A, Ex. WW1/B and Ex.WW1/C. Since there was occasion, opportunity and motive available with the claimant to manipulate, hence entries contained in those registers cannot be taken as gospel truth. However, some of the entries have been signed by Sub-Divisional Engineer, in the capacity of in-charge of the said guest house. Therefore, those entries may prove to be beacon light to ascertain the period of which the claimant worked in the said guest hosue. Entries in these three registers would be scrutinized and appreciated on above standard, which would check the Tribunal from being driven astray by either of the parties.

12. As unfolded by the claimant, register Ex.WW1/A contains entry from 18-4-96 to 4-7-96. When this register was closely perused not even a single entry was noticed, which was authenticated by the Sub-Divisional Engineer. The management presents a claim that claimant worked from July, 1995 till May 96. Since none of the entries in Ex.WW1/A were verified by Sub-Divisional Engineer at any point of time, entries beyond May, 1996 can not be read in favour of the claimant, for fear of being misled by manipulated document puts me on guard. Hence this register cannot give any clue in respect of period beyond May, 1996, for which the claimant claims to have worked with the management.

13. Register Ex.WW1/B contains entries from 1-4-97 to 8-10-97. On perusal of the said register it came to light that on 21-12-97 Shri S. C. Gupta checked the said register and recorded an entry "paid" Over the word "paid", the claimant had written his own name in his own hand subsequently. In the same manner an entry was recorded by Shri Gupta on 11-1-98. In front of the word "paid" the claimant had added his name subsequently. On 19-1-98 Shri Gupta checked the register and wrote "paid". Against word "paid" claimant wrote his name in his own hand. On 16-2-98 again Shri Gupta checked the register and recorded his endorsement "paid". Over that endorsement, claimant had appended his signatures subsequently. On 14-3-98 register was checked by Shri R. P. Singh who recorded an entry "paid". Above that entry Shri R. P. Singh had also appended his signatures, hence claimant could not write his name over that entry. On 20-5-98 again Shri S. C. Gupta checked the register and recorded entry "paid". Against that entry, claimant recorded his name subsequently, in his own hands. On 19-6-98 the claimant had appended his signatures above the entry recorded by Shri Gupta in the same fashion as explained above. On 10-6-98 register was checked by Shri R. P. Singh and he recorded an entry "paid". Against that entry, the claimant had not made any interpolation. However he made interpolation against the entry dated 8-6-98, recorded by Shri S. C. Gupta. These facts highlight that when the claimant took away registers, he made interpolations, with a view to fabricate evidence in his favour. Therefore, entries recorded in register Ex.WW1/B cannot be taken as authentic fact to ascertain period of engagement of the claimant by the management.

14. Register Ex.WW1/C contains entries from 21-6-98 to 6-9-98. On 28-6-98 register was checked by Shri R. P. Singh and he recorded an entry "paid". Such an entry was also recorded by Shri Singh on 21-6-98. Against these entries no interpolation was done. These entries nowhere specify that it were recorded by the claimant. On 20-8-98 an entry was recorded by Shri S. C. Gupta as "paid". Against that entry claimant wrote his name in his own hand and that too with a different ink. Thus on 20-8-98 same forgery was done by the claimant. On 2-12-98 register was again checked by Shri S. C. Gupta and over the entry "paid" claimant wrote his name in his own hand with a different ink. Same forgery was done by the claimant on 31-10-98. On 30-11-98 Shri R. P. Singh recorded an entry in his own hand, "paid to Mr. Uttam Singh C/R". No forgery was possible against this entry. Hence it was left untouched by the claimant. There are entries on pages wherein accounts for the month of December, 98, January, 99, and February, 99 have been maintained. In those pages Shri S. C. Gupta recorded entries "paid" and appended his signatures. Over those entries the claimant added his name with his own hand writing, that too with a different ink. Therefore, it is obvious that the claimant had fabricated aforesaid entries, when he wrote his name over word "paid" recorded by Shri S. C. Gupta, Sub-Divisional Engineer, who was in-charge of the said guest house. Entry recorded by Shri R. P. Singh makes it clear that in November, 98 Uttam Singh was working as Caretaker at the said guest house. It emerges over the record that register Ex.WW1/C was maintained by Shri Uttam Singh and when claimant took away the record, he made interpolations with a view to create circumstances which may be adduced in evidence to persuade this Tribunal to form erroneous view in respect of the period for which claimant worked as Caretaker with the management. Therefore these registers cannot be taken as authentic record to ascertain period for which the claimant worked with the management.

15. Uttam Singh projects that the claimant was getting a sum of Rs. 1200 PM as his wages. He asserts that two Caretakers were working there in the guest house. His assertion is unfounded, since registers referred above highlight that often and then guests used to visit the said guest house. Frequency of visits paid by guests in the guest house is very low. Even one Caretaker was having no sufficient job for him, there was no occasion for the management to engage another person in the guest house. Testimony of Shri Uttam Singh on that count does not stand to reasons. He projects that he was working as Caretaker in the guest house from 19-2-97 till 14-5-99. Claimant agitates that Uttam Singh was working as helper with him. His assertion stands belied from the fact that Shri R. P. Singh records that he made payment to Shri Uttam Singh, Caretaker on 30-11-98. Writing of Shri R. P. Singh clinches that Uttam Singh was working as Caretaker in the guest house. Therefore, it is evident that the claimant was not serving in the guest house from 19-2-97 till 14-5-99, the period for which Uttam Sigh worked as Caretaker there. All these facts make it clear that Uttam Singh entered the witness box with a view to espouse claim put forward by Mohan Singh. His testimony is discarded, since it does not stand the test of veracity and truthfulness.

16. Claimant could not establish that he served the management beyond May, 1996. The management admits that he rendered services from July, 1995 till May, 1996. Therefore, out of facts projected by the parties it stands established that the claimant worked for 11 months with the management. Claimant presents that he worked continuously without any break. Whether service rendered by the claimant can be termed as continuous service for a period of one year? For an answer, it would be seen as to what continuous service means. "Continuous Service" has been defined by Section 25B of the Industrial Disputes Act, 1947 (in short the Act). Under Sub-section (1) of the said section, "continuous service for a period" may comprise of two period viz. (i) uninterrupted service, and (ii) interrupted service on account of (a) sickness, (b) authorized leave, (c) an accident, (d) a strike which is not legal, (e) a lock-out, and (f) a cessation of work that is not due to any fault on the part of the workman, shall be

included in the "continuous service." Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calendar months immediately preceding the retrenchment.

17. At the cost of replication, it is said that Mohan Kumar served till May 1996. He was engaged by the management on 10-6-95. Management no where claims that his service was interrupted for any reasons other than those detailed in sub-section (1) of section 25 B of the Act. He rendered more than 240 days continuous service during the period of 12 calendar months immediately preceding the date of his disengagement viz. May 1996. His case is covered within the definition of "cominuous service" as enacted in section 25-B of the Act. Therefore, it is appropriate to conclude that Mohan Kumar acquired status of an industrial employee, on rendering continuous service of one year with the management.

18. As detailed above claimant had rendered continuous service for more than 240 days with the management. Management could not show that he was appointed against the said post for a specific period. In the light of facts noticed above it would be considered as to whether disengagement of Shri Mohan Kumar amounts to retrenchment. Retrenchment has been defined by clause (oo) of section 2 of the Industrial Disputes Act, 1947 (in short the Act) as follows :

> "(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include—
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the service of the workman as a result of the non renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under the stipulation in that behalf contained therein; or termination of the service of a workman on the ground of continued ill-health."

19. Shri Mohan Kumar projects that his services were dispensed with abruptly. Management nowhere presents that notice or pay in lieu thereof was given to him, while terminating his services. Retrenchment compensation was not paid to him. The management was under an obligation to pay him compensation for retrenchment that too at the time of retrenchment. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in Bombay Union of Journalists case [1964(1) LLJ 351], Adaishwar Laal (1970 Lab.I.C.936) and B.M.Gupta [1979(1)LLJ 168] announce that subsequent payment of compensation can not validate an invalid order of retrenchment. As retrenchment compensation was not paid to Mohan Kumar, consequently action of the management falls within the mischief of section 25-F of the Act. 20. Services of the workman were retrenched without payment of retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, normal rule is to award reinstatement in service. However in Uma Devi [2006(4) SCC I] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workmen to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell. The Court ruled thus :

> "With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts ? This Court, in our view, is bound to insists on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here-can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the direction made in Piara Singh [1992(4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the

law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent."

21. In P.Chandra Shekhara Rao and Others [2006 (7) SCC 488] the Apex Court referred Uma Devi's Case (supra) with approval. It also relied the decision in a Uma Rani [2004(7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh [2006(5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In Indian Drugs & Pharmaceuticals Ltd. [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment can not be relaxed and court can not direct regularisation of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

22. In Uma Devi (supra) it was laid that when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job.

23. Whether Mohan Kumar has a right of reinstatement in service ? Reinstatement in service would amount to continuation of the claimant in service. Hence it would be expedient to know the mode of his entry in the job. He present that he joined as Caretaker in the guest house on 10-6-95. On this point, the management asserted that the claimant joined in July, 1995. His engagement was as casual labour, who used to get Rs. 1000 per month as wages. These facts make it implicit that engagement of the claimant was not in consonance with recruitment rules. No evidence was brought by the claimant to establish that his engagement was in accordance with recruitment rules. Hence one may conclude that his reinstatement in service would amount to his continuation in Government job, where he made back door entry. Hence order of reinstatement in service would negate constitutional scheme of public appointments, hence it can not be ordered.

24. Services of the workman were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman". In lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper. Retrenchment of Mohan Kumar is held to be wrongful. Consequently, this Tribunal has to award compensation to the workman in lieu of his reinstatement. No definite yardstick for measuring the quantum of compensation is available'. In S.S.Shetty [1957(II)LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words :

> "The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future award by industrial Tribunal in the event of industrial disputes arising between the parties in future. In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.
>
> Having regard to the considerations detailed above it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to

make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

25. A Divisional bench of the Patna High Court in B. Choudhary Vs Presiding Officer, Labour Court, Jamshedpur [(1983) Lab. I.C. 1755 (1758)] duduced certain guidlines which have to be borne in mind in determining the quantum of compensation viz., (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (vii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive In addition to the amount of compensation. it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab.I.C.1887).

26. In Assam Oil Co.Ltd.[1960(1)LLJ 587] the Apex Court tooK into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it . would be fair and just to direct the appellant a substantial sum as compensation to her." In Utkal Machinery Ltd.[1966(1) LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the Industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A. K. Roy [1970(1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakaraborty [1962(11) LLJ 483] the Count converted the award of reinstatement into compensation of a sum of Rs. 50000 as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P.Bhandari [1986 (II) LLJ 509]. The Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K. Aggarwal (1988 Lab.I.C. 380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab.I.C.44) the court directed payment of Rs. 75000 in view of reinstatement with back wages. In Naval Kishor [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLJ 19] a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal [1985 Lab.I.C.(1) 225] a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab.I.C. 107) a compensation of Rs. 65000 was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V.Rao (1991 Lab.I.C. 1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

27. The claimant had worked for a year with the management as a caretaker in the guest house referred above. He was getting a sum of Rs. 1000 PM as his wages. He was having no right to hold the post since he was appointed in violation of the rules of recruitment. Taking into account all these facts, coupled with the fact that the claimant has been litigating since long, a compensation of Rs. 5000 would be adequate in the matter. Accordingly it is commanded that the management would pay a sum of Rs. 5000 to the claimant as compensation for his wrongful retrenchment. An award is accordingly,passed. It be sent to the appropriate Government for publication.

Dated : 27-8-2010

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2010

का.आ. 2590.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम.टी.एन.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं.-I, नई दिल्ली के पंचाट (संदर्भ संख्या 20/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-9-2010 को प्राप्त हुआ था ।

[सं. एल-40012/116/2005-आई आर (डीयू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 20th September, 2010

S.O. 2590.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2006) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of MTNL and their workmen, which was received by the Central Government on 20-09-2010.

[No. L-40012/116/2005-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 20/2006

Shri Ramakar Singh S/o Shri Chanderej Singh,
R/o C-332, Brij Vihar,
Ghaziabad(UP). ... Workman

Versus

The Managing Director, MTNL,
Khurshid Lal Bhawan,
New Delhi. ... Management

AWARD

Third round of litigation has been raised by Ramakar Singh seeking his reinstatement in the employment of Mahanagar Telephone Nigam Limited (hereinafter referred to as the Nigam), successor in interest of Post and Telegraph Department, Government of India, New Delhi. In 1st round, he approached Central Administrative Tribunal where he lost since the Nigam being an autonomous body, there was no notification under sub-section (2) of Section 14 of the Administrative Tribunal Act, 1985, to grant jurisdiction to the Tribunal to entertain his application. In second round, he raised a dispute before the Conciliation Officer, Government of NCT, Delhi, and on failure of conciliation proceedings a reference of the dispute was made by Government of N.C.T., Delhi, to a Labour Court, constituted by that Government. The Nigam raised an objection that the Labour Court was having no jurisdiction to adjudicate the reference, which objection was answered against the claimant, vide award dated 6-1-2003. He unsuccessfully assailed the award before the High Court of Delhi. In 3rd round of litigation, he raised a dispute before the Conciliation Officer (Central). Since conciliation proceedings failed, a failure report was submitted to the Central Government, by the Conciliation Officer under sub-section (4) of section 12 of the Industrial Disputes Act, 1947 (in short the Act). On consideration of the said failure report, appropriate Government invoked its powers contained in clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act and referred the dispute to this Tribunal for adjudication, vide order No.L-40012/116/2005-IR(DU), New Delhi, dated 6-6-2006, with following terms :

> "Whether the services of Shri Ramakar Singh S/o Shri Chanderej Singh, Ex-Daily rated Mazdoor have been terminated by the management illegally and/or unjustifiably w.e.f. 12-9-84 ? If so, to what relief the workman is entitled to and from which date ?"

2. Claim statement was filed by Ramakar Singh pleading that his name was sponsored by the Employment Exchange, Pusa Road, New Delhi for engagement as a daily wager employee with Post and Telegraph Department and as such he was engaged by the said department in 1977. He served the said department till 11th of September, 1984, continuously. An identity card bearing No. PSD:M.ROC/PMR/35/80 dated 16-1-80 was issued in his favour, which was taken back on the pretext of its renewal. He continuously served the said department for seven years and worked for more than 240 days in each calendar year. Though his work was satisfactory, yet on account of certain vested interests he was not absorbed in a permanent employment. In July, 1984, he fell sick. He informed the department about his sickness. He could not attend to his duties for about 1-1/2 month. When he reported for his duty, on regaining health, he was taken back and performed his duties on 11-9-84. His services were terminated w.e.f. 12-9-84, in an illegal and arbitrary manner. He went on to report for his duties for 3-4 months but was not allowed to do so. All other employees of his status were later on absorbed/transferred in the employment of the Nigam, when it came into existence. His juniors, namely, Shri Jai Singh, Shri Rajinder Singh and Shri Raj Nath Tripathi, were regularized and absorbed in the services of the Nigam. When he was not taken on job, he made a written representation on 22-1-85 to the Area Manager (Works), Naraina. No response to his representation was made. Thereafter, he approached I.C. Sharma, Assistant Private Secretary to the Minister of State for Labour and requested him for projecting his grievance to the authorities. Shri Sharma wrote a letter dated 16-4-86 to the General Manager of the Nigam, which letter was responded to on 24-5-86, detailing therein that he had left the work of his own accord. He submitted another representation dated 11-12-86 before the Divisional Manager but to no avail.

3. The claimant details history of approaching Central Administrative Tribunal for relief and loosing the matter for want of jurisdiction. He also unfolds that he approached Conciliation Officer, Government of N.C.T., Delhi and when conciliation proceedings failed, his dispute was referred to a Labour Court, constituted by the State Government. He filed a claim before the Labour Court, which was resisted by the Nigam pleading that the Labour Court has no jurisdiction to entertain it, since State Government was not appropriate Government in the matter. The Labour Court adjudicated the reference on that preliminary issue, concluding that since State Government was not the appropriate Government, it lacked the jurisdiction to adjudicate the reference. Against award dated 6-1-2003, passed by the Labour Court, he preferred a writ petition No. 3306/2003 before High Court of Delhi. The said writ petition was disposed of by the High Court with an observation that he should approach the Central Government which is the appropriate Government in the matter.

4. He presents that though he rendered continuous service for 7 years, yet his services were dispensed with in an arbitrary manner. No notice or pay in lieu thereof or retrenchment compensation was paid to him. Provisions of section 25-F of the Act were violated. His juniors have been regularized and absorbed in the service of the Nigam and he has been discriminated. He seeks reinstatement in service with continuity and full back wages.

5. Claim was resisted by the Nigam pleading that the claimant never worked with the Nigam, since it came in existence on 1st of April, 1986. The claimant worked with Post and Telegraph Department, Government of India and as such he cannot raise his grievance against the Nigam. It has not been disputed that the claimant was engaged by Post and Telegraph Department, Government of India, in 1977 and worked as a daily wager with that department till 11th of September, 1984. It has been pleaded that he absented himself from reporting to his duties w.e.f. July, 1984. In contradiction to that stand the Nigam further projects that he did not report for his duty after 11-9-84. Since he himself had abandoned his duties, it cannot be said that his services were dispensed with by the answering respondent. It was an abandonment of service by the claimant, hence there was no question of serving any notice or award pay in lieu thereof. No retrenchment compensation was to be paid, since he was not retrenched. Provisions of section 25-F of the Act has not come into play. It has been projected that claim statement is devoid of merits, hence it may be dismissed.

6. Claimant has examined himself in support of his claim. Shri Charan Singh, Sub-Divisional Engineer (Legal), submitted his affidavit Ex.MW1/A as evidence on behalf of the Nigam. He was cross examined at length on behalf of the claimant. No other witness was examined by either of the parties.

7. Arguments were heard at the bar. Shri Vikas Khurana, authorised representative, advanced arguments on behalf of the claimant. Shri Karan Maini, authorised representative, raised his submissions on behalf of the management. Written submissions were filed on behalf of the parties. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on the issues involved in the controversy are as follows :

8. Shri Ramakar Singh deposed that he joined services of Post and Telegraph Department in 1977 as daily wager. No appointment letter was issued to him. He worked continuously with the said department up to September, 1984. His rendered continuous service without any gap. He was paid Rs. 450 per month as his wages. On these aspects, Shri Charan Singh projects in his cross-examination that the claimant worked with the Department of Telecommunication as daily wager from 1977 till 1984. He asserts that in July, 84, he stopped coming to his duties. Though Shri Charan Singh makes an admission in his testimony that the claimant worked with the Department of Post and Telegraph from 1977 till July, 1984, yet the Nigam had not disputed facts in its written statement to the effect that the claimant worked with Department of Post and Telegraph, Government of India from 1977 till 11-9-1984. Therefore, out of facts testified by the claimant, those admitted in the written statement and conceded by Charan Singh in his testimony, it is evident that the claimant worked with Department of Post and Telegraph, Government of India from 1977 till 11th of September, 1984.

9. To prove that he rendered continuous service for not less than one year in a calendar year, the claimant asserts that he served Post and Telegraph Department, Government of India continuously from 1977 till 11th of September, 1984. These facts were not disputed by the Nigam in its written statement. Facts which are admitted need not be proved. Even otherwise the claimant deposed that he joined his services with Post and Telegraph Department, Government of India in 1977 and continuously worked as a daily wager up to 11th of September, 1984. When his testimony was purified by an ordeal of cross-examination, he conceded that he has no documentary proof to show that he worked continuously from 1977 till September, 84. However, he relied certified copy, which was exhibited as Ex.W-9, of the evidence of Shri S. K. Malhotra, S.D.O., Rajouri Garden, who was examined by the Nigam before the Labour Court. Shri Malhotra conceded in his cross-examination that the claimant was appointed in 1977 and worked up to September, 1984. He further projects that during tenure of his service neither any charge-sheet was issued nor any enquiry was conducted against the claimant. His work and conduct was to the entire satisfaction of the authorities. Therefore, in testimony Ex.W9 Shri S.K. Malhotra nowhere projects that the claimant had not worked continuously with Post and Telegraph Department, Government of India, New Delhi. Out of testimony of Shri Malhotra, testimony of the claimant gets support to this effect that he worked continuously with Post and Telegraph Department, Government of India from 1977 till September, 1984.

10. To project actual days of work, on which the claimant had referred his services in each calendar year, the management ought to have produced muster rolls and other documents. Shri Charan Singh projects that period of preservation of muster roll is for five years as detailed in Ex. MW1/1. Undoubtedly Ex. MW1/1 points out that period of preservation of muster roll is for five years. However, that document highlights that labour pay sheets are to be maintained for all times. When claimant was working as a daily wager in that situation labour pay sheets were available with the Nigam. For reasons best known to the Nigam, those labour pay sheets were not brought over the

record to establish that the claimant had worked less than 240 days in any calendar year. The Nigam had withheld the best evidence, for reasons known to them. Consequently it is apparent that the Nigam has not been able to dispel facts testified by the claimant, relating to continuity of his service. In view of clear and cogent facts deposed by the claimant, admission made by the management in its written statement and that too by Charan Singh in his testimony, it is concluded that the claimant has rendered continuous service for 240 days in each calendar year, for a period of seven years for which he served the Post & Telegraph Department, Government of India, new Delhi.

11. A claim was made by the Nigam, agitating that the claimant abandoned his service in July, 84. Facts projected in the written statement are discrepent. At one place it has been mentioned that the claimant started absenting himself from his duties from July, 84. In subsequent sections it is mentioned that he chose not to join his duties after 11-9-84. In Ex.W9 Shri S.K.Malhotra projects that the claimant worked upto September, 1984. He deposed in bold words that the claimant remained absent since September, 1984 till April,1986. Therefore, in second round of litigation management projected a stand that the claimant absented from his duties w.e.f. September, 84. The story was given a twist in 3rd round of litigation when it was claimed that the claimant absented himself from his duties w.e.f. July, 1984. On these facts the claimant projected that he fell ill in July, 84 and could not attend to his duties for 1-1/2 months. Thereafter he went to attend his duties and he worked upto 11th of September,1984. These facts emerge over the record out of facts testified by Shri Malhotra before the Labour Court, which are detailed in Ex.W-9. Consequently it is concluded that the claimant worked with the Post and Telegraph Department, Government of India till 11th of September,1984 and prior to that he remained on leave for about 1-1/2 months.

12. Shri Ramakar Singh deposed that on 12th of September,1984, Junior Engineer had not taken him on duty. He approached S.D.O. but he was not allowed to resume his duties. Had claimant been absent from July, 84 till April, 1986 the management ought to have written letters to him calling upon him to join his duties. His representation dated 22-1-85, which is Ex. W-1 highlights that he made a request to Area Manager (Works), Naraina, New Delhi, for reinstatement of his job. When in January, 85, claimant makes a request for reinstatement of his job, it cannot be said that he remained absent from his duties till April, 86 Therefore, stand taken by the Nigam to the effect that the claimant absented himself from his duties from July, 84 till April, 86, is devoid of merits. There is substance in the case projected by the claimant that his services were dispensed with on 12th of September, 1984.

13. Whether termination of the services of the claimant amounts to retrenchment ? For an answer definition of the word retrenchment is to be considered, which is extracted thus :

> "(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the service of the workman as a result of the non renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under the stipulation in that behalf contained therein; or termination of the service of a workman on the ground of continued ill-health;"

14. Management had not been able to project that the services of the claimant were done away by way of punishment for disciplinary action or he sought voluntary retirement. It is not case of the management that claimant stood retired on reaching age of superannuation or his services came to an end on account of non renewal of contract of employment, on its expiry. His services were not done away on the ground of continued ill-health. Therefore, termination of the services of the claimant for whatsoever reason, other than mentioned above, amounts to retrenchment.

15. Section 25-F of the Act enjoins a duty on an employer not to retrench an employee who has been in continuous service for not less than one year, until (a) he has been given one months notice in writing indicating reasons for retrenchment and the period of notice has expired or he has been paid in lieu of such notice, wages for the period of the notice, (b) he has been paid, at the time of his retrenchment, compensation equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by way of notification in the Official Gazette.

16. Neither notice or pay in lieu thereof was tendered to the claimant at the time of retrenchment of his services. Retrenchment compensation was also not paid to him. The management was under an obligation to pay him compensation for retrenchment and the time of retrenchment. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in Bombay Union of Journalists case [1964 (I)

LLJ 351], Adaishwar Laal (1970 Lab.I.C.936) and B.M. Gupta [1979 (I) LLJ 168] announce that subsequent payment of compensation can not validate an invalid order of retrenchment. As retrenchment compensation was not paid to Ramakar Singh, consequently action of the management is held to be violative of the provisions of Section 25-F of the Act.

17. Besides his retrenchment being violative of section 25-F of the Act, claimant projects that his juniors, namely, S/Shri Jai Singh, Rajinder Singh and Raj Nath Tripathi, are still serving the management, since their services have been regularized. Facts in this regard were conceded by Shri S.K.Malhotra, in his testimony before the Labour Court, certified copy of which is Ex.W-9. He concedes that juniors of the claimant are still working in the establishment as permanent employees. Therefore, on the date when services of the claimant were retrenched, neither a seniority list was displayed nor the principles of last to come and first to go was followed. These facts makes it clear that his retrenchment is violative of the provisions of Section 25-G of the Act.

18. Much hue and cry has been made by the management asserting that the claimant has no right to continue in service, since his engagement was not in consonance with the recruitment rules. Contra to it the claimant pleads that his name was sponsored by the Employment Exchange, when he joined services with Post and Telegraph Department, Government of India as a daily wager. Facts in this regard were not disputed by the management. Therefore, it is evident that the claimant was engaged in the services of Post and Telegraph Department, Government of India, when his name was sponsored by the Employment Exchange for employment. It cannot be said that his employment was contrary to recruitment rules. Therefore, contention of the management is not well founded on that issue too.

19. The Nigam is successor in interest of Post & Telegraph Department, Government of India, New Delhi. Facts in this regard are highlighted by Shri Charan Singh in his testimony. This fact also emerges over the record through facts unfolded by Shri S.K.Malhotra in his testimony, which is Ex.W-9. Therefore, it is evident that the Nigam is the successor in interest of the Post & Telegraph Department, Government of India, New Delhi. Clause (c) of sub-section (3) of Section 18 of the Act makes it clear that an award shall be binding on an employer, his heirs, successor or assigns in respect of their establishment to which the dispute relates. Therefore, the Nigam being the successor in interest of Department of Post & Telegraph, Government of India, New Delhi, cannot disown enforcability of the award under reference on it. It does not lie in its mouth to say that the claimant has never been its employee, hence it has no legal obligation in the matter.

20. Services of the claimant were dispensed with in violation of the provisions of Section 25-F of the Act. Provisions of Section 25-G were also violated. In such circumstances the claimant is entitled for relief of reinstatement in service. It cannot be said that his reinstatement would amount to back door entry in the service, since he joined the service of Post & Telegraph department in consonance with recruitment rules.

21. Question which crepts for considerations is whether the claimant is entitled to wages for intervening period. For that purpose the claimant has to establish his unemployment from September, 1984 till date. A bad statement was made by the claimant agitating that since date of termination of his service he is unemployed. He had not clarified as to whether he made any efforts with any of the establishment to get employment. Therefore, this part of statement is not sufficient to say that the claimant remained unemployed, since the date of termination of his services. For a period of more than 26 years the claimant remained out of the job. He cannot be awarded back wages since it would amount to unjustified enrichment. Considering all these aspects I do not find it to be a case of award of back wages.

22. However claimant has been able to establish his entitlement for reinstatement in service. Consequently the claimant shall be reinstated in service by the Nigam, which is successor in interest of Post & Telegraph Department, Government of India, New Delhi, with continuity of service and consequential reliefs, without any back wages. His services would be regularized from the date when his juniors, namely, Shri Jai Singh, Shri Rajinder Singh and Shri Raj Nath Tripathi, were regularized in services. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 25-8-2010

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 21 सितम्बर, 2010

का.आ. 2591.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत ओवरसीज बैंक लि., के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट (संदर्भ संख्या 155/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-09-2010 को प्राप्त हुआ था ।

[सं. एल-12012/303/97-आई आर (बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 21st September, 2010

S.O. 2591.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No. 155/98)

as shown in the Annexure, in the Industrial dispute between the management of Bharat Overseas Bank Ltd., and their workmen, received by the Central Government on 21-09-2010.

[No. L-12012/303/97-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case I. D No.-155/98

Shri Ramal Thaper, 716-IIJ
Bhai Ranbir Singh Nagar, Ludhina ...Applicant

Versus

(1) Assistant General Manager, Bharat Overseas Bank Ltd., 756, Anna Saki, Habib Tower, Chennai.

(2) The Branch Manager, Bharat Overseas Bank, Branch Officer, Bahadur House, Ludhina ...Respondents

APPEARANCES

For the Workman : Shri Amit Sharma.

For the Management : Shri Vikas Bali.

AWARD

Passed on : 25-8-10

Government of India vide notification No. L-12012/303/97-IR(B-I), dated 03-08-1998 by exercising its powers under Section 10 of the Industrial Disputes Act, (the Act in short) has referred the following industrial dispute for adjudication to this Tribunal :—

> "Whether the action of the management of Bharat Overseas Bank Ltd. In imposing penalty of dismissal of services upon Shri Ramal Thaper w.e.f. 27-06-96 is just and legal. If not, to what relief the workman is entitled and from which date ?"

After receiving the reference, parties were informed. Parties appeared and filed their respective pleadings. Before providing the opportunity for adducing oral evidence, parties were heard on the issue of fairness of enquiry. The issue was decided by this Tribunal vide order dated 09-10-2009 holding that enquiry was fairly conducted and there has been no violation of any rules of principle of natural justice. Thereafter, on perversity in decision making, if any, and adequacy of punishment parties were afforded the opportunity for oral evidence. Oral evidence was thereafter recorded. Thus, the order on preliminary issue on fairness of enquiry dated 09-10-2009 shall be the part of this award. The copy of the order shall be enclosed with the award while communicating the same to the Central Government for publication and providing the copies to the parties after publication.

On the pleadings of the parties the main dispute before this Tribunal is as follows :—

That on 07-08-1993 when the workman was working as cashier of Ludhiana branch, the Jalandhar Employees Union called for a strike w.e.f. 07-08-1993 following the suspension of clerical staff for misbehaviour. The workman decided to participate in the strike. In view of the decision to participate in the strike the Accountant of the branch Mr. P.S. Bhadhwa instructed him to handover the charge of cash and cash keys. It is the contention of management that the workman joined the strike without handling over the charge of cash and cash keys and intentionally disturbed the transactions and working of the bank up to 19-09-93 when the police case was registered against him for criminal breach of trust. The workman along with other co-workers who were on strike also raised slogans outside and inside the bank premises with filthy and un-parliamentary language to the manager and other officials of the bank who had not joined the strike. The workman was put under suspension for his so called misbehaviour. He was given the charge sheet on 30-08-93 on five accounts as under :

(1) Your action of not handing over the possession of cash keys before absenting yourself from duty amounts to violation of instructions laid down in the Bank's Book of Instruction, which is a minor misconduct as per para no. 19.7(d) of the Bipartite settlement dated 19-10-1966.

(2) Your failure and refusal to hand over the possession of cash keys and the charge of cash before striking work and despite repeated instructions by Accountant/Branch Manager and also by Head Office amounts to willful insubordination/disobedience which is a major misconduct as per para no. 19.5(e) of the Bipartite Settlement dated 19-10-1966.

(3) Your action of deliberately disrupting the branch functioning from more than 12 days handing over the cash keys as a result of which customers and bank have been put to undue hardship, difficult and loss in an act prejudicial to the interest of the bank which is a major misconduct as per Para No. 19.05(j) of the Bipartite Settlement dated 19-10-1966.

(4) Your action of entering the Ludhiana Branch premises during the period of suspension without permission is violation of specific

instructions contained in the order dated 16-08-1993, is an act of willful insubordination/ disobedience which is a major misconduct as per para no. 19.05(e) of the Bipartite Settlement dated 19-10-1966.

(5) Your action of shouting unparliamentary slogans against Manager, Officers and other non-striking members inside the branch premises before and after suspension has tarnished the image and reputation of the Bank and you have thereby acted in a manner prejudicial to the interest of the bank which is major misconduct as per para no. 19-05-(j) of the Bipartite Settlement dated 19-10-1966.

As stated earlier, the question on fairness of enquiry has already been decided by this Tribunal vide order dated 09-10-2009. The issue before this Tribunal remains as follows :—

(1) Whether there was any perversity in the decision making of the enquiry officer holding all the charges proved against the workman ?

(2) Whether the punishment awarded to the workman was adequate and proportionate to the committed misconduct ?

On both of the issues parties were afforded the opportunity for adducing evidence. Evidence of Shri Ramal Thaper was recorded in detail. No evidence was adduced by the management. I have heard the parties at length on the above mentioned issues. Written briefs have also been filed by the workman. I will discuss the decision of enquiry officer on charges no. I, 2 & 3 altogether because all the three charges are relating to handing over the cash and cash keys before absenting from the branch and joining the strike. This is not an issue whether the strike called by the Union which the workman voluntarily joined was legal or illegal. Any of the issue has no concern with the legality of the strike. In spite notice, it is my duty to mentioned that to go on strike is the right of every workman. This right is not absolute. It is subject to the reasonable restrictions. Meaning thereby, strike has to be subject to the limitations and restrictions imposed by law.

Now, I will discuss the decision of enquiry officer on the charges no. 1 and 3 which are relating to the handing over the cash keys. Charge no. 1 is regarding the violation of the instructions laid down in Banks Books. Instructions which is a minor misconduct in para 19.7(d) of the Bipartite Settlement. it is established before this Tribunal that cash keys were not handed over before 1993, on filing of complaint in the police against the workman for criminal breach of trust.

The workman has contended that he was ready to handover the cash and cash keys but he was not instructed by the Manager of the branch to whom the cash keys and the cash were to be handed over. The workman relied upon the applications written to the Branch Manager in this regard in between. The very perusal of the letter which have been filed and relied upon by the workman, it is clear that language used in the letters which has been filed by the workman along with the written arguments proves the intention of the workman behind holding the cash and cash keys. I have gone through the entire evidence recorded by the enquiry officer on behalf of the management of the bank. In all evidence of six witnesses evidence recorded and all the witness have proved it beyond doubt that in spite of several directions to the workman he denied to handover the cash and cash keys to the authorized person. On the other hand, the matter was reported to the police by the workman regarding the non-receiving the cash keys and cash. The entire material on record including the evidence recorded by the enquiry officer does not prove even prima-facie the facts which lead to the intention of the bank authorities not to receive the cash and cash keys. It is true that management has to prove the charge against the workman but the Tribunal has to take the cumulative affect of the entire evidence on record. The only ground that charge of cash keys and the cash could not be transferred as desired by the management and taken by the workman that no man was appointed to receive the charge of cash and cash keys. But under the similar circumstances when the police compliant lodged against the workman for criminal breach of trust on account of breach of direction to give the possession of cash and cash keys, the workman handed over the keys to the Manager concern. At that time too no person was authorized in written by the Manager to retain the keys. There are several written direction of the manager and from the Head Office directing the workman to give the possession of cash and cash keys but he did not abide by the directions. The evidence of six witness categorically proved that every day oral, directions were also given by the Branch Manager Shri Saini to handover the charge of cash and cash keys but that was not acceded by the workman. The language used in the letters written by the workman to the Branch Manager and to the police and the evidence recorded by the enquiry officer cumulatively proves that the intention of the workman was to disturb the business of the bank till the suspension order of co-worker was not withdrawn.

Learned Counsel for the workman has rightly mentioned that misconduct means :

"Misconduct in common parlance means bad conduct and some sort of an ill motive or bad motive is an essential ingredient in imputing misconduct on to an individual. Mere error of judgment or a mere negligent way of dealing in the matter cannot by itself be termed to be misconduct. it must be coupled with such other act or acts by which motive would

be apparent either expressly or be inferred by implication."

It is the act with intention to harm or to violate the instructions of the bank which is amounted to misconduct. Misconduct has to be differentiate with negligence. After considering the letters, particularly the language used in the letter and the evidence of both of the parties it is clear that not handing or transferring of charge of cash and cash keys was deliberate act of the workman and it cannot be termed as the negligence.

It has also been the contention of the learned counsel for the workman that duplicate keys were lying with the management, why the duplicate keys are not used to regulate the business of the bank ? The letter written by the workman to the police authorities holding the manager personal liable in case of any eventuality. Certainly it was the event of defusing courage of the authorities of the bank to open the cash in absence of the workman.

It is true that the defence witness have deposed that workman has tried to handover the charge of cash and cash keys but no one was deputed to take the charge and it could not be done. The evidence given by all the defence witnesses has not rightly being evaluated by the enquiry officer. Even defence witnesses has alleged about the misbehavior and capricious attitude of the manager. As per the tendency of Indian witness, the witness so become hyperbolic that DW 2 even did not sphere the wife of the manager Mrs. Saini, whereas, she has no concern with the official affairs of Mr. Saini. This statement of DW 2 did not find favour by the statement of other defence witness. Even DW3 did not hesitate to mention that once upon a time Mr. Saini Branch Manager raised the slogans against the workers. DW3 in the name of father of the Nation Mahatma Gandhi had tried to justified his statement but the cumulative affect of all the defence witnesses is that workman was visiting the chamber of the branch manager everyday. he was having the occasion to transfer the charge of cash and cash keys but, as stated earlier, he has deliberately not transferred the same with a view to disturb the natural and normal function of the bank. All the defence witness if taken together has attracted on the behavior of Mr. Saini without giving any thought that subject of the enquiry was not subject matter of Mr. Saini but the act done by the workman. There is accordingly no perversity in the decision making of the enquiry officer in holding the charges no, 1, 2, & 3 well proved against the workman. Charge no. 1 as stated earlier, is relating to the violation of a circular order for handing over the charge of cash and cash keys, whereas, the charges no. 2 & 3 are relating to the consequences for not transferring the charge of cash and cash keys. The enquiry officer has rightly held that it was a deliberate act of the workman to disturb the normal working of the financial institution which was against the interest of the bank with ulterior motive as explained above.

So far as charge no. 4 is concern, if the defence evidence is relied upon it is mentioned that no some occasion workman has visited the branch and has entered into the premises of the bank with the premission of the branch manager. Every defence witness had also deposed on oath before the enquiry officer that every day representative of the Union and the workman were visiting in the chamber of the Branch Manager Mr. Saini. On the other hand, the evidence of six witness of the bank have proved this charge beyond doubt that even without permission the workman was visiting the Bank premises and the chamber of the Branch Manager. Accordingly, there is no perversity as well in decision making of the enquiry officer holding this charge well proved against the workman.

The last charge is relating to raising the unparliamentary and filthy slogans inside and outside the premises of the bank. In my view the reasonable restrictions imposed by law on strikes are that it should be peaceful and it will not affect the normal functioning of the organization. The workman by his acts for not denying the handing over the charge of cash and cash keys has disturbed the natural and normal functioning of a financial institution for at least a weak. All the six witnesses of the bank have stated that unparliamentary and filthy language was used by the workman while rosorting slogans against the Manager, against some offcials which ware duputed by the head office like Sri Mishra and against those officials who had not joined the strike. The charge does not contain the actual language used in slogans. It is the settled law of service jurisprudence that management has to prove actually all the words which were used in slogans. Every witness of the management has made it clear what language was used by the workman while using the slogans inside and outside the branch permises? In slogan word ***Kutta*** was used for the officers and the bank officials, who had not joined the srtike. The derogatory language which is well mentioned in the evidence of DW1 to DW6 were also perused. The defence witnesses had not denied the raising of slogans. They have stated that by whom slogans were raised it was not possible to tell them because they could not recognized the voice. No defence witness has categorically sated that slogans were not raised by the workman. As stated earlier, the entire defence evicence was not the behavior of the Branch Manager Mr. Saini and not on the act of the workman at the time in question. The management by independent witnesses has proved that unparliamentary language and filthy words were used while raising slogans against the Branch Manager, officer deputed by the head Office and those officials who had not joined the strike. It has also been proved that slogans were raised outside and inside the branch premises which disturbed the functioning of the bank altogether. Thus, I am unable to trace out any perveristy in decision making of the enquiry officer on charge no. 5 as well and enquiry officer has rightly held the charge no. 5 to be well proved.

On the basis of the above observation, I am of the view that enquiry officer has rightly held all the charges well proved against the workman.

Now, I am going to decide the next issue which is on quantum of punishment. It was not the negligence on the part of the workman but a deliberate act of inaction and laxity on his part. Inaction and laxity on his part could have been tolerated but it was to create such a situation not to allow any person to work. The act of the workman was against the very work culture and amounting to gross indiscipline. In my view any deliberate act of indiscipline and against the work culture should be dealt with very harshly and the management has rightly awarded the punishment to kept away such type of employee from the bank. Creating such a situation that working of a financial institutions paralyze for a week and raising slogans with derogatory and unparliamentary language like ***Kutta*** are and act which does not permit any judicial conscious to tolerate. In my view, the punishment awarded to the workman was proportionate to the committed misconduct. The industrial dispute is answered accordingly. Let Central Government be approached for publication of award and thereafter, file be consigned to record room.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 22 सितम्बर, 2010

का.आ. 2592.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बड़ौदा ईस्टर्न यूपी ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट (संदर्भ संख्या 40/09) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-9-2010 को प्राप्त हुआ था ।

[सं. एल-12011/09/2009-आई आर (बी.-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 22nd September, 2010

S.O. 2592.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No. 40/09) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the Industrial dispute between the management of Baroda Eastern UP Gramin Bank, and their workmen, received by the Central Government on 22-9-2010.

[No. L-12011/09/2009-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE SHRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 40/09

Between

The Regional Secretary,
Baroda Eastern UP Gramin Bank Employees Union,
Ramanand Nagar,
Allahpur,
Allahabad

And

The Regional Manager,
Baroda Eastern U P Gramin Bank,
3D Taskand Marg,
Civil Lines,
Allahabad.

AWARD

1. Central Govt. MOL, New Delhi, vide notification no. L-12011/09/2009-IR(B-1) dated 21-07-09, has referred the following dispute for adjudication to this tribunal—

2. Whether the action of the management of Baroda Eastern UP Gramin Bank, Allahabad in deducting the salary of Sri Shard Srivastava for 28-09-07, on the plea that he attended the Dharna organized by the Union whereas the workman attended the conciliation proceedings with management's representative before ALC(c) Allahabad is just fair and legal ? If not, what relief the workman concerned is entitled to ?

3. The aforesaid reference was received and registered in this tribunal on 30-07-09. Thereafter notices were sent to the parties vide registered post. On the next date i.e. 01-09-09 opposite party put in their appearance but workman did not put in his appearance nor filed the claim statement.

4. It appears that several notices were sent to the claimant but all returned with the endorsement that the address is not complete.

5. In such situation it is not possible for this tribunal to find out the proper address of the claimant. Credence also shows that the parties were directed by the Ministry also to file their statement within 15 days of the receipt of the order of reference. This reference order is dated 21-07-09.

6. Therefore, when claimant has failed to file claim statement despite best efforts I thing that the

reference cannot be decided for want of pleadings and proof by the claimant. Accordingly reference is decided in the above terms.

Dt. 15-09-10

RAM PARKASH, Presiding Officer

नई दिल्ली, 22 सितम्बर, 2010

का.आ. 2593.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार करूर वैश्य बैंक, करूर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चैन्नई के पंचाट (संदर्भ संख्या 18/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-09-2010 को प्राप्त हुआ था ।

[सं. एल-12012/18/2007-आई आर (बी.-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 22nd September, 2010

S.O. 2593.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award Ref. 18/2007 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial dispute between the management of Karur Vysya Bank, Karur and their workmen, received by the Central Government on 22-09-2010.

[No. L-12012/18/2007-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 17th September, 2010

Present: A.N. JANARDANAN
Presiding Officer

INDUSTRIAL DISPUTE No. 18/2007

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Karur Vysya Bank and their Workman)

Between

The General Secretary
Karur Vysya Bank Employees
Union 20, West Temple Street,
Basavangudi, Bangalore-560007 : 1st Party/Petitioner

Vs.

The Chairman and Managing
Director, Karur Vysya Bank,
Karur : 2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner : M/s V. Ajay Khose, Advocates

For the 2nd Party/Management : M/s. T. S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour vide its Order No. L-12012/18/2007-IR(B-I) dated 27-04-2007 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Karur Vysya Bank in terminating the service of Sri C. Mohan for the mis-conduct of habitual unauthorized absence and dis-obeyance is justified ? If not, to what relief Sri C. Mohan is entitled to ?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 18/2007 and issued notices to both sides. Both sides entered appearance through their Advocates and filed their Claim and Counter Statement as the case may be.

3. The case in the Claim Statement briefly stated is as follows :

The workman Sri C. Mohan who joined service of 2nd Party as Sub-Staff on 06-08-1983 with service of 21 years by now, a permanent resident of Shenoy Nagar in Chennai and originally posted at Podhathur in Andhra Pradesh, later transferred to Chennai and thereafter lastly transferred to Vandavasi Branch after successive transfers to various branches and with great mental agony due to his income being too insufficient to meet his and family's expenses, suddenly went on leave from 27-03-2003 due to unexpected and severe ill-health without being able to intimate his leave immediately or after proceeding on leave. Within a week he sent a letter on 03-04-2003 and sought for medical leave from 27-03-2003 for one month. He sent another letter dated 03-05-2003 for extension of medical leave. He had to take treatment for Acid Peptic Disease and Wax Electrotherapy for Knee ailment. The reason for leave though not in dispute, the 2nd Party informed him by letter dated 07-05-2003 that the period from 27-03-2003 was taken as unauthorized absence and that he should report for work immediately on a technical reason that leave was not applied for within 3 days and not supported by Medical Certificate. His salary from 27-03-2003 was ordered to be

recovered. The bank then itself pre-decided to send the workman out of service. The workman being a last grade servant was not aware of the leave rules and procedures. The bank should have furnished him with all information. On receipt of letter dated 07-05-2003. The workman by letter dated 08-05-2003 with Medical Certificate applied for leave from 27-03-2003 to 08-05-2003 and sought for Medical Leave from 09-05-2003 to continue treatment. The reply was only by an OM dated 26-05-2003 charging (i) disobedience of lawful and reasonable orders and (ii) habitual absence without leave and habitual irregular attendance. He gave explanation dated 03-06-2003 and denied charges conveying interalia that it was due to his ill-health and ignorance and with no intention to disobey the orders. An enquiry was held from 19-09-2003 to 25-09-2003 marking 12 documents and examined two witnesses. On 25-03-2004 he was asked to explain as to the findings that the charges are proved with a copy of the findings furnished to him. He submitted explanation on 14-09-2004 with reasons for unsustainability of the finding. On 03-07-2004 Show Cause Notice was issued proposing punishment of dismissal without notice. In the personal hearing on 13-07-2004 also he submitted his reasons. On 13-10-2004 he was discharged from service instead of dismissal, which is not short of capital punishment. His appeal dated 24-11-2004 was rejected on 12-02-2005. The action is violative of principles of natural justice and bipartite settlement regarding leave. Bipartite Settlement does not say that Medical Leave application shall be submitted within 3 days. The action is without jurisdiction. Leave rules not in consonance with settlement could not be a basis to proceed against. The punishment is totally unjust and lacks bonafide. After submission of leave applications with Medical Certificates his absence cannot be treated as absence. His unauthorized absence cannot be even minor misconduct. His habitual absence without leave prior to 7 years cannot be taken into account. Clause-19(5)(f) is unjustified. During illness order to report for work is not lawful. Discharge is illegal, malafide and in colorable exercise of powers. He could be proceeded against under Clause19(5)(e) only if he did not report for work if the reasons for leave were wrong. Disciplinary action is vitiated. It was due to being beyond his control. That he was very good in his work during 21 years of service already put is not taken into account. Similar persons were either let off or imposed minor punishment. The action is discriminatory and vindictive. The punishment is shockingly disproportionate and amounts to unfair labour practice and legal victimization. Hence the reference and the claim.

4. The Counter Statement contentions briefly read as follows :

Apart from awards and settlements governing wages, allowances and other service conditions there are also rules and regulations framed on certain matters not covered by awards or settlements. Medical Leave cannot be claimed as a matter of right except on workman falling sick. Leave rules were communicated by Circular No. 87/93 dated 12-03-1993. Ever since the workman was confirmed he was highly irregular in attendance and he resorted to absence without leave. In 1988 he was punished with stoppage of increment for 3 months for unauthorized absence for 52 days in June and July 1988. He was charged sheeted on 23-11-1989, 17-01-1990 and 14-12-1990 for absence without leave and punished with stoppage of 3 increments. In 1994, he was absent without leave for 93 days and his basic pay was reduced by one stage. In 1995 he absented for 75 days and his basic pay was reduced by one stage. In the same year he absented for 38 days from 21-08-1995 and his pay was reduced by one stage. For another instance of absence for 72 days from 07-05-1995 basic pay was reduced by two stages. On 18-08-1999 while at Vandavasi to which place he was posted in which small branch with lesser staff members he, the only Sub-Staff persisted in his absence without leave from 27-03-2003. On 26-05-2005 he was charge sheeted for unauthorized absence and disobedience of lawful order in not sending leave application with Medical Certificate. On 30-05-2003, he only sent a letter for 1 month leave deferring medical certificate to be sent later. On 17-06-2003, he sent a Medical Certificate from Mental Health Institute admitting to be in-patient on 04-06-2003 and prayed for leave upto 03-07-2003. Thereafter he did not report. Medical Certificate showed his alcoholic dependency and mental depression. On a letter of reference dated 25-06-2003 Mental Health Institute by certificate dated 09-07-2003 reported that he was recommended leave from 05-06-2003 to 03-07-2003 and his physical fitness to resume duty thereafter, which he did not comply. He reported for duty only on 29-08-2003 covering his absence from 27-03-2003 to 28-08-2003. He fully participated in the enquiry held in the absence of a satisfactory explanation. He was represented by a Union Office Bearer. The workman cannot be heard to complain that as he was not in a position to shift his family he was forced to frequently absent from work. Even on 03-04-2003 the date of application for leave or on 29-04-2003, the date of extension of leave he did not send a Medical Certificate. The alleged ill-health was his own making because of his addiction to drinks. His termination from service was not pre-determined. The workman was aware that Medical Certificate for Sick Leave beyond two days was imperative. His leave letters dated 03-04-2003 and 29-04-2003 being without Medical Certificates, they were rejected and by letter dated 07-05-2003 he was directed to report for duty by a telegram as well. Communication dated 07-05-2003 was only a routine communication and not punitive. The Medical Certificate dated 08-05-2003 did not recommend any leave beyond that date. Still he did not report for duty. The said Medical Certificate would not entitle him to get his absence from 24-07-2003 to 08-05-2003 regularized or justified to condone his failure to report for duty. Procedure of leave is provided by Leave Rules and not by the Bipartite Settlement. He has

been informed about the circular. Subsequent submission of Medical Certificate is of no avail: To admit that workman is really ill no credence was given to the Medical Certificate. His past record of service speaks volume against his irregular attendance. The punishment is not at all excessive or in unfair labour practice or victimization. The claim is to be rejected.

5. The evidence consists of the testimony of WW1 on the petitioner's side with no documentary evidence. On the Respondent's side no oral evidence was adduced but Ex.M1 to Ex.M44 were marked.

6. **Points for consideration are:**

(i) Whether the termination of service of the workman by the Responden Bank is justified ?

(ii) To what relief the concerned workman is entitled ?

Points (i) & (ii)

7. On behalf of the petitioner, the learned counsel would argue that unauthorized absence or overstay on leave is a minor offence and that habitual absenteeism when is with genuine bonafide and valid reasons cannot attract major punishment of discharge from service. He was being disalowed from joining duty when he was reporting for duty with Fitness Certificate after availing leave. He had availed leave after giving intimation. While he was continuing treatment he had sent leave or intimation. Direction to join duty when he was undergoing treatment is unreasonable. So much so the conduct of not reporting to the duty pursuant to direction cannot amount to disobedience. The reasons were beyond the control of the petitioner and hence he absented from duty. The action is on trivial charge revolving around leave rules of the bank and it is not justified for the Respondent/Bank to have discharged the petitioner. Since the disease continued without being cured after sending intimation further absenteeism entailed.

8. The contra arguments on behalf of the Respondent are that admittedly from the evidence of WW1 he is an alcoholic dependent and he had been charged for being drunk. It is in evidence that due to addiction to alcohol he was admitted to Psychiatric Hospital with diagnosis as Alcoholic Dependence. He has been punished previously with stoppage of increments for a number of times.

9. The learned counsel for the petitioner relied on the decision of the Supreme Court in the MANAGEMENT OF KARNATAKA STATE ROAD TRANSPORT CORPORATION VS. KARNATAKA STATE ROAD TRANSPORT CORPORATION STAFF AND WORKERS FEDERATION AND ANOTHER (1999-2-LLN-16), JAGDISH SINGH VS. PUNJAB ENGINEERING COLLEGE AND OTHERS (2009-III-LLJ-373), MAVJI C. LAKUM VS. CENTRAL BANK OF INDIA (2008-3-LLN-1) of which the dicta are not applicable to the facts of the case.

10. The learned counsel for the Respondent relied on the decision of the Supreme Court in L&T KOMATSU Ltd. VS. N. UDAY KUMAR (2008-I-LLJ-849) wherein it is held that. *"habitual absenteeism is a gross violation* of *discipline and the parameters for the exercise* of *Section-11 A have not been kept in view by the Labour Court and the High Court. Unless the punishment was shockingly disproportionate, quantum* of *punishment could not be interfered with"*.

11. Here is the case of a workman who is habitually absent. He was subjected to various punishments including stoppage of increments for different spells. He was disobedient, a habitual drunkard, not sending leave application whenever he is absent with any Medical Certificate if and when necessary or deferring Medical Certificates to be sent subsequently. He seeks refuge saying that he is a Sub-Staff hard hit for money and for maintenance and is unable to shift his family to any place to which he is transferred frequently and that he was forced to frequently absent from work. According to the Management, the ill-health of the workman is due to his own creation by reason of addiction to drinks. His ignorance of any service rules or the necessity to furnish Medical Certificate for his Sick Leave beyond prescribed days as an imperative condition cannot be approved. Even his belated leave applications not proper in format nor supported by Medical Certificate when rejected with direction to report for duty was defied by him. Telegram sent was also in vain. That apart he has been informed about the circular providing for the procedure for availing leave which procedure is not laid down by the Bipartite Settlement. The Medical Certificate being not in time was found not reliable. His past record of service showing his habitual absenteeism recurs in his continued conduct of absenting with irregular attendance. To him the rule seems to be to habitually absent and to be present for duty irregularly. He does not deserve any leniency and the punishment is only to be upheld. The pertinent question emerging in the given facts and circumstances is: what would be the efficacy and usefulness of such a workman from being in service and what could be a more adequate punishment to him than the one imposed? The answer seems to be emphatically in the negative. However I am of the considered view that while with the discharge of workman from service by way of a modified punishment from dismissal to discharge ordered by the Disciplinary Authority to meet the ends of justice he should not be let of without some benefit especially in view of the fact that the modification of dismissal to discharge has not entailed in enuring any benefits to him since has not completed the required service for superannuation benefits. Hence as a measure of benevolence and social justice, he is to be

extended some compensation in monetary terms while he has to leave his place of employment forever, again to be a succour to his family depending on him. Hence the Management is directed to pay the workman a lumpsum of Rs. 1.00 lakh in one tranche reckoning his service so far rendered, which money, it is fondly expected may benefit his family members.

12. On a consideration of the evidence, I see no reason why the impugned action is not to be upheld. Therefore, it is only to be found that his discharge from service is justified. However, the Management is directed to pay the workman a sum of Rs. 1.00 lakh in one tranche by way of compensation in consideration of his service rendered to the cause of the Management.

13. The reference is answered accordingly.

(Dictated to the PA, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 17th September, 2010)

A. N. JANARDANAN, Presiding Officer

Witnesses Examined:—

For the 1st Party/Petitioner : WW1, Sri C. Mohan
For the 2nd Party/Management : None

Documents Marked :—

On the petitioner's side

Ex. No.	Date	Description
	N/A	

On the Respondent's side

Ex.No.	Date	Description
1	2	3
Ex.M1	—	Leave rules as per the provisions of various Bi-partite Settlements
Ex. M2	12-03-1993	Circular 87/93 (PAD-37) issued by the Respondent regarding leave availment by employees—procedures to be followed.
Ex. M3	—	Blank (specimen) leave application containing general instructions (on reverse side) for applying leave.
Ex. M4	25-10-1993	Appointment order issued to concerned workman by the Respondent as Sub-Staff on probation at Sathrawada Branch.
Ex. M5	29-03-1986	Printed application (7 pages) submitted by the concerned workman containing details about him.
Ex. M6	17-11-1988	Punishment Order No. OPAD/18/88 issued to the concerned workman imposing the punishment of "stoppage of next increment for 3 months".
Ex. M7	23-11-1999	Chargesheet No. PAD/12/89 issued to the concerned workman.
Ex. M8	17-01-1990	Chargesheet No. PAD/09/90 issued to the concerned workman.
Ex. M9	14-02-1990	Chargesheet No. PAD/15/90 issued to the concerned workman.
Ex. M10	3-01-1991	Appeal order PAD/02/91 (enclosing detailed order PAD/01/90-91 dated 01-01-1991) modifying the punishments imposed in respect of the above three chargesheets.
Ex. M11	14-05-1994	Chargesheet No. PAD/24/94 issued to the concerned workman.
Ex. M12	21-06-1995	Chargesheet No. PAD/07/95 issued to the concerned workman.
Ex. M13	10-10-1995	Chargesheet No. PAD/24/1995 issued to the concerned workman.
Ex. M14	16-10-1995	Chargesheet No. PAD/26/1995 issued to the concerned workman.
Ex. M15	24-02-1997	Final Order No. PAD/DP/08/97 issued to the concerned workman in respect of chargesheet dated 14-05-1994.
Ex. M16	24-02-1997	Final Order PAD/DP/09/97 issued to the concerned workman in respect to the chargesheet dated 21-06-1995.
Ex. M17	24-12-1997	Final order PAD/DP/10/97 issued to the concerned workman in respect of the chargesheet dated 10-10-1995.
Ex. M18	18-12-1997	Final Order PAD/44/97 issued to the concerned workman in respect of the chargesheet dated 16-10-1995.
Ex. M19	7-08-1999	Transfer Order issued to the concerned workman transferring him to Ponnur Branch (Subsequently shifted to Vandavasi).
Ex. M20	6-02-2002	Letter bearing reference No. GEN/106/2002 issued to concerned workman by the Manager of Vandavasi Branch regarding his absence.

1	2	3
Ex. M21	21-04-2003	Vandavasi branch letter PAD/3/2003-2004 enclosing the concerned workman's request letter dated 3-04-2003 for one month leave.
Ex. M22	5-05-2003	Vandavasi branch letter PA/7/2002-2003 enclosing the concerned workman's request letter dated 29-04-2003 for extension of one month leave.
Ex. M23	7-05-2003	Letter No. CH.DO/4/393/2003-2004 from Divisional Office addressed to the concerned workman.
Ex. M24	13-05-2003	Vandavasi branch letter No. CH.DO/11/2003-2004 enclosing the concerned workman's letter dated 8-05-2003 alongwith Medical Certificate dated 8-05-2003 issued by Dr. S. Mohan.
Ex. M25	26-05-2003	Chargesheet No. PADW/-07/06/2003 issued to the concerned workman (chargesheet for which he has been discharged from the services — under reference before this Court).
Ex. M26	4-06-2003	Vandavasi branch letter No. PAD/25/2003-04 addressed to PAD, Central Office, Karur enclosing letter dated 30-05-2003 from the concerned workman.
Ex. M27	20-06-2003	Vandavasi branch letter No. DO/34/2003-2004 addressed to Divisional Officer, Chennai enclosing letter dated 18-6-2003 from the concerned workman alongwith Medical Certificate dated 17-06-2003 issued by Institute of Mental Health, Chennai.
Ex. M28	25-06-2003	Letter from the Respondent to the Director, Institute of Mental Health, Chennai requesting for report/medical opinion in respect of the concerned workman.
Ex. M29	16-07-2003	Vandavasi branch letter No. DO/43/2003-2004 enclosing Medical Certificate dated 9-07-2003 issued by the Institute of Mental Health, Chennai.
Ex. M30	9-09-2003	Divisional Office letter No. CH.DO/PAD/71/2206/2003-04 addressed to PAD, Central Office enclosing leave letter dated 29-08-2003 for the period from 27-03-2003 to 28-08-2003 submitted by the concerned workman alongwith his letter dated 29-08-2003.
Ex. M31	16-06-2003	Order of the Disciplinary Authority bearing Reference No. PAD/DP/13/2003 appointing Enquiry Officer.
Ex. M32	16-06-2003	Order of the Disciplinary Authority bearing Reference No. PAD/DP/06/2003 appointing Presenting Officer.
Ex. M33	19-09-2003	Enquiry Proceedings.
Ex. M34	25-11-2003	Enquiry Proceedings.
Ex. M35	25-03-2004	Letter from the Disciplinary Authority bearing Reference No. PAD/09/2004 sent to the concerned workman alongwith report of Findings on the chargesheet No. PA/W-07/06/2003.
Ex. M36	14-04-2003	Submission made by Defence Representative of the concerned workman on the above findings.
Ex. M37	3-07-2004	Proposing punishment show cause notice issued to the concerned workman by the Disciplinary Authority.
Ex. M38	13-07-2004	Proceedings of proposed punishment hearing.
Ex. M39	13-10-2004	Final Order passed by the Disciplinary Authority imposing the punishment of "Discharge from the services of the Bank".
Ex. M40	24-11-2004	Appeal filed by the concerned workman before the Appellate Authority.
Ex. M41	12-02-2005	Appeal Order passed by the Appellate Authority.
Ex. M42	28-08-2006	Reply statement filed by the Respondent before the Conciliation Officer on the dispute filed by the concerned workman.
Ex. M43	3-01-2007	Failure report submitted by the Conciliation Officer.
Ex. M44	25-07-2006	Receipt of full and final settlement of gratuity to Mohan.

नई दिल्ली, 22 सितम्बर, 2010

का.आ. 2594.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या सीजी आईटी/एल सी/आर/129/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-9-2010 को प्राप्त हुआ था ।

[सं. एल-40012/117/97-आई आर (डीयू)]
जोहन तोपनो, अवर सचिव

New Delhi, the 22nd September, 2010

S.O. 2594.—In pursuasnce of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/129/98) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workmen, which was received by the Central Government on 22-9-2010.

[No. L-40012/117/97-IR (DU)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/129/98

Presiding Officer : Shri Mohd. Shakir Hasan

Smt. Rama Bai,
W/o Late Babulal,
Opp. of S. Bazar,
Hoshangabad (MP) ....Workman/Union

Versus

District Manager,
Telecom District,
O/o T.D.M. Itarsi,
Distt. Hoshangabad (MP) ....Management

AWARD

Passed on this 15th day of September, 2010

1. The Government of India, Ministry of Labour *vide* its Notification No.L-40012/117/97/IR(DU) dated 14-6-98 has referred the following dispute for adjudication by this tribunal :

"Whether the action of the management of Telecom District Manager, Itarsi in terminating the services of Smt. Rama Bai W/o Late Shri Babulal w.e.f. 22-11-96 is justified? If not, to what relief the workman is entitled for?"

2. The workman did not appear inspite of notice though she was duly informed and her family member appeared in court and took time for statement of claim. Lastly the reference proceeded ex parte against the workman on 14-7-2009.

3. The case of the management is that the workman Smt. Rama Bai worked as a part-time water woman for half an hour per day in the Telephone Trunk Exchange, Hoshangabad. She had never completed 240 days in a calendar year. She had never worked against permanent post. The said Telephone Trunk Exchange was closed and her service came to end automatically. On these grounds, the reference be answered in favour of the management.

4. The only issue for determination is as to whether the action of the management in terminating the services of the workman w.e.f. 22-11-96 is justified?

5. In order to prove the case, the management has adduced one witness in the reference. Shri G.P.Gaur is working as SDE(Legal) at Hoshangabad. He has supported the case of the management. He has stated that the workman was part-time water woman. She worked only half an hour a day. She had not completed 240 days in any calendar year. His evidence is unrebutted. There is nothing on the record to disbelieve his evidence. His evidence clearly shows that the provision of Section 25 F of the I.D. Act is not attracted. She is not to be considered as in continuous service for a period of one year. She is, therefore, not entitled to any relief. Accordingly the reference is answered.

6. In the result, the award is passed without any order to costs.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour and Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 22 सितम्बर, 2010

का.आ. 2595.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिलिट्री डेयरी फार्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एल सी/आर/170/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-9-2010 को प्राप्त हुआ था ।

[सं. एल-14012/14/95-आई आर (डीयू)]
जोहन तोपनो, अवर सचिव

New Delhi, the 22nd September, 2010

S.O. 2595.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/170/96) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Military Dairy Farm and their workman, which was received by the Central Government on 22-9-2010.

[No. L-14012/14/95-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/170/96

Presiding Officer : Shri Mohd. Shakir Hasan

Smt. Sukallo w/o Parma,
Resident of House No. 43,
Near Badakua, Bilhari,
Mandla Road, Jabalpur ....Workman/Union

Versus

Officer-in-charge,
Military Dairy Farm,.
Mandla Road, Jabalpur

The Dy.Director,
Military Dairy Farm,
Head quarter, Central Command,
Lucknow. ....Managements

AWARD

Passed on this 14th day of September 2010

1. The Government of India, Ministry of Labour vide its Notification No.L-140 12/14/95-IR(DU) dated 30-8-96 has referred the following dispute for adjudication by this tribunal :

"Whether the action of the management of Military Dairy Farm, Mandla Road, Jabalpur (MP) in terminating the services of Smt. Sukallo, shed Cleaner from September-1991 vide oral order is valid and proper. If not, to what relief the concerned workman is entitled for?"

2. The case of the workman in short is that the workman was employed with the management since 1966 as shed cleaner and worked continuously but surprisingly without any notice or information, she was terminated from the service from April 1991. Though the Manager has regularized the service of those who were junior to her. She worked for more than 240 days and is entitled for retrenchment compensation in terms of Section 25-F of the Industrial Dispute Act (in short I.D.Act). It is stated that the termination is illegal. It is submitted that the workman be reinstated with full back monetary benefits.

3. The non-applicant/management appeared and contested the reference by filing Written Statement in the case. The case of the management, inter alia, is that the provision of I.D. Act is not applicable as the Military Dairy Farm is responsible to supply the milk required for various units established at Jabalpur and is commanded by an Officer of the Indian Army. The establishment of Dairy Farm of the Army is in discharge of the "Sovereign function of the State." The workman was engaged for limited period when temporary work was available or whenever there was an exigency of work for Intermittently from August 89 to September 1991. She was not engaged against any regular post. She had never completed 240 days in a calendar year as such the provisions of Sections 2 (oo) and 25 (F) of the I.D.Act are not attracted. It is submitted that the reference be answered in favour of the management.

4. The workman became absent subsequently. Lastly the then Tribunal proceeded the reference exparte against the workman on 10-3-08.

5. On the pleadings of the parties, the following issues are framed—

I. Whether the I.D.Act is applicable to the Military Dairy Farm?

II. Whether the action of the management in orally terminating the services of Smt. Sukallo, Shed Cleaner w.e.f. September-1991 is legal and justified?

III. To what relief the workman is entitled?

6. Issue No.I

The first objection of the management is that the I.D.Act is not applicable against the management. The first schedule of I.D.Act deals with the Industries which may be declared to be Public Utility Services under Sub-Clause (vi) of Clause (N) of Section 2. Item No. 8 is Defence Establishment.Thus it is clear that the Defence Establishments come under the purview of the I.D.Act. The Military Dairy Farm is obviously under defence establishments. Therefore, the I.D.Act is applicable against the management. This issue is, accordingly, answered.

7. Issue No. II

The management has adduced one witness in the case. Shri Hari Krishan is supervisor in Military Farm, Jabalpur. He has stated that Smt.Sukallo worked as Shed cleaner for the period of Aug. 89 to Sept.91. She was over 50 years of age and had left the job on her own account. He has stated that she had not worked 240 days in a calendar year. His evidence is unrebutted. There is no reason to disbelieve his evidence. It is clear that she had not worked continuously for a period of one year during a period of twelve calendar months preceding the date of reference. Thus the provision of Section 25-F of the I.D.Act is not applicable. Accordingly the issue is decided in favour of the management.

8. Issue No. III

On the basis of the discussion made above, it is clear that the workman is not entitled to any relief. The reference is accordingly answered.

9. In the result, the award is passed without any order to costs.

10. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 22 सितम्बर, 2010

का.आ. 2596.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं.-I, चण्डीगढ़ के पंचाट (संदर्भ संख्या 1/2002, 65/2000, 176/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-9-2010 को प्राप्त हुआ था ।

[सं. एल-40012/202/2001-आई आर (डी.यू.),

सं. एल-40012/354/99-आई आर (डी.यू.),

सं. एल-40012/61/2002-आई आर (डी.यू.)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd September, 2010

S.O. 2596—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/2002, 65/2000 & 176/2002) of the Central Government Industrial Tribunal-Cum-Labour Court, No.-I, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 22-9-2010.

[No. L-40012/202/2001-IR (DU),

No. L-40012/354/1999-IR (DU),

No. L-40012/61/2002-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE SHRI GYANANDRA KUMAR SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

1. **Case No. I.D. No. 1/2002**

Sh. Des Raj S/o Sh. Chamaru Ram,
C/o Sh. D.R. Sharma K. No. 552,
Sector 41-A, Chandigarh.

2. **Case No. I.D. No. 65/2000**

Sh. Sarwan Kumar S/o Punnu Ram
Vill & P.O. Ghred, Tehsil Bharmaur,
Distt. Chamba (H.P.)

3. Case No. I.D. No. 176/2002

Sh. Bodh Raj S/o Sh. Chamaru Ram,
C/o Sh. D.R. Sharma K. No. 552,
Sector 41-A, Chandigarh. ...Applicants

Versus

1. The Divisional Engineer,
Telecom Project, Sanjay Sadan.
Shimla (H.P.)

2. Divisional Engineer-II,
Telecom Project (Set) A.R.A. Centre.,
Jhandewalan Exten.,
New Delhi-110055. ....Respondent.

APPEARANCES

For the workman : In person.

For the Management : Sh. Jitendar Kumar

AWARD

Passed on 7-9-2010

These three references and Industrial dispute namely; ID No. 176 of 2002, ID No. 1/2002 and ID No. 65 of 2000 are related to each other. Common questions of law and facts are involved in all these references hence, for ends of justice, all the references and industrial disputes are hereby adjudicated and answered by this award. The reference under Industrial Disputes referred by the Central Government by exercising power under Section 10 of the Industrial Disputes Act (referred to as an Act) are as follows :—

1. No. L-40012/202/2001-IR (DU) dated 19-12-2001

"Whether the action of the management of the Divisional Engineer, Telecom Project, Sanjay Sadan, Shimla, in ordering disengagement/termination of the services of Sh. Desh Raj S/o Sh. Kansh Ram is just ana legal and if not what relief the workman is entitled to and from which date ?"

2. No. L-40012/354/99-IR (DU) dated 09-02-2000

"Whether the action of the Divisional Engineer, Telecom Projects SET New Delhi, in terminating the services of Sh. Sarwan Kumar S/o Sh. Punnu Ram w.e.f. 1-9-96 is legal and justified? if not, to what relief the workman is entitled ?"

3. No. L-40012/61/2002-IR (DU) dated 14-08-2002

"Whether the action of the management of the Divisional Engineer, Telecom, Shimla, in terminating the services of Sh. Bodh Raj labour on daily wages w.e.f. October 1996 is just and legal ? If so, what relief the workman is entitled ?"

After receiving the reference parties were informed. Parties appeared and filed their respective pleadings. It is the common case of every workman that they were engaged by the Telecommunication Department for a particular job on daily wages. Their services were terminated without notice, without payment of one month wages in lieu of notice and without payment of retrenchment compensation. New hands were engaged after termination of their services. On the basis of above facts every workman has prayed for an order of this Tribunal for setting aside the termination order and consequential order for reinstatement of their services in the same position they were working before termination of their services along with other benefits.

Management appeared and opposed the claim of every workman by filing written statement. It is the main contention of the management that every workman was engaged for a particular project and since the work of that project was completed, the services of the workmen were terminated automatically. The termination of the services on account of cessation of the project does not amount to retrenchment hence, it was not mandatory on the part of the management to give any notice or one month wages in lieu of notice or retrenchment compensation.

As stated earlier, parties were afforded the opportunity of adducing evidence. Evidence of every workman was recorded. On the other hand evidence of the management was also recorded. There is no documentary evidence on record. It is only the oral contention of each workman supported with the affidavit, which is on file. To my surprise no workman has even requested the court orally or in writing for summoning the relevant record lying in the custody of the management.

It is the settled principle of service jurisprudence that workman has to prove that his services were terminated against the provisions of the Act. In all the reference and industrial disputes in question the contention of each workman is that their services were terminated without notice or one month wages in lieu of notice and without payment of lawful terminal dues without considering the fact that they have completed 240 days of work in the preceding year from the date of their termination. Another contention of the workman is that fresh persons were engaged after termination of their services.

As stated earlier it is the only oral contention of the workman without proof. There is a difference in pleadings and proof. To prove the facts pleaded some cogent evidence is required. The oral facts pleaded cannot sufficiently be proved by oral contention made in the affidavit. What cogent evidence has to be placed before this Tribunal depends upon the facts and circumstances of each case? The workman should have filed come documents to prove the payment of wages regarding their Attendance Register and some documents regarding administrative control of the management over them but they failed. To my surprise none of the workman has even prayed or summoning the documents lying in the custody of the management. It is true that it is also the duty of the Tribunal to summon the documents lying In the custody of the management, but the Tribunal or the judicial Forum should not cross its 'Lakshman Rekha'. It is not the duty of the Tribunal to generate evidence. If the workman has requested the court to summon the documents lying in the custody of the management. It was the duty of this Tribunal to direct the management to file the documents and in case of failure of management the tribunal was at liberty to take the adverse Inference. It is not the case in any of the industrial disputes. In Bodh Raj's case ID No. 796 of 2005, workman has filed a certificate issued by the Divisional Engineer, Telecom Project, Sanjay Sadan. Shimla regarding his engagement and working with the management from 01-05-1995 to 31-01-1996. It is also mentioned in the certificate that his total work experience in the department is more than 240 days. In the evidence recorded by the Tribunal, the workman has admitted that he was engaged on a particular project. He has also mentioned that he do not know the name of any person, who was engaged after his termination. The requirement of law is that workman should have completed 240 days of work in the preceding year from the date of his termination. The certificate is regarding the working days in total and tenure and not in the preceding year from the date of termination. Moreover, when a person is disengaged on completion of work of any project, it will not amount to retrenchment. It is not the case of the workman that some other persons after the termination of his services were engaged. In a very garlanding word it is mentioned in pleadings that after termination of his service new hands were engaged but this fact has not been proved.

In rest of two industrial disputes as well the position is the same. There is no document on record to prove the contention of the workman. Even the documents have not

been summoned by the workman. In I.D. No. 65 of 2000 Shri Sarwan Kumar Versus Telecom Project the workman has provided photo copy of ACG 17 regarding payment of wages, which is not sufficient to prove the facts pleaded by the workman.

Accordingly, the cumulative effect of the pleadings and evidence is that the workmen failed to prove that they have completed 240 days in the preceding year from the date of their termination. They have also failed to prove that any fresh hands were engaged after their termination. Accordingly, the management is not guilty, as per the evidence provided by the workman, for violating any provisions of Industrial Disputes Act. The contention of the management that the workmen were engaged on a particular project has been admitted at least in two industrial disputes. Working on a project and completion of the project has not been disputed. Accordingly, there is no force in the claim of any of the workman. They are not entitled to any relief. All the industrial disputes under reference are accordingly disposed of. Let Central Government be approached for publication of the award, and thereafter, file be consigned to the record room.

G.K. SHARMA, Presiding Officer

नई दिल्ली, 22 सितम्बर, 2010

का.आ. 2597.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ पटियाला के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं.-I नई दिल्ली के पंचाट (संदर्भ संख्या 43/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-9-10 को प्राप्त हुआ था।

[सं. एल-12012/467/99-आई आर (बी-I)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 22nd September, 2010

S.O. 2597.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No. 43/2000) as shown in the Annexure, in the Industrial Dispute between the management of State Bank of Patiala and their workmen, received by the Central Government on 22-9-2010.

[No. L-12012/467/99-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE DR. R.K. YADAV PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 43/2003

Shri Subhash Chand Chawla
R/o A-3, Kaushambi,
P.O. Sahiababad,
Distt. Ghaziabad,
Uttar Pradesh-201 010 ....Workman

Versus

The Managing Director,
State Bank of Patiala,
Head Office-the Mall,
Patiala-147001 ... Management

AWARD

Transfer to Surya Nagar Extension Counter of State Bank of Patiala (in short the bank) was sought by Shri Subhash Chand Chawla, since the said extension counter was in near vicinity of his house. His request was conceded to by the bank. While working at the said extension counter, Shri Chawla was served with a charge sheet dated 27th of February, 96, alleging therein that on 22nd of February, 95 he did not complete his work in spite of advice tendered by the Branch Manager, on 10th of March ,95 he used abusive language and threatened the branch manager saying, "thobra tor doonga" and on that very day he unauthorizedly left the branch for lunch at 2.15 PM while lunch break used to began from 2.30 PM in those days. For those misconducts an enquiry was constituted against him and Shri T. S. Lakra was appointed as Enquiry Officer. Shri Lakra submitted his report dated 3-5-97 to the Disciplinary Authority. Show cause notice dated 6-1-98 was sent to Shri Chawla and punishment of censure was awarded to him by 'the Disciplinary Authority, vide order dated 18th of March, 98. In the meantime Shri Chawla absented from his duties since 24-6-96. Notice dated 12-11-96 was sent calling upon him to join his duties within 30 days from the date of service of the said notice, failing which he would be deemed to have voluntarily retired from service on expiry of the period of 30 days of the said notice. On 20th of June, 98 an order was issued by Assistant General Manager of the bank, detailing therein that Shri Chawla had failed to report for duties by 12-12-96, hence he is deemed to have been voluntarily retired from service on 24-6-96, which order became an eye sore for Shri Chawla. He raised an industrial dispute before the Conciliation Officer. Bank resisted his claim, which act led to failure of the conciliation proceedings. Consequently, the appropriate Government was constrained to refer the dispute for adjudication to this Tribunal, vide order No. L-12012/467/99-IR(B-I), New Delhi, dated 24-3-2000. with following terms :

> "Whether the action of the management of State Bank of Patiala in treating alleged unauthorized absence as deemed to have voluntary retired from services by Shri Subhash Chawla, Ex-Clerk cum Typist w.e.f. 24-6-96 vide order dated 20-6-98 without domestic enquiry is just. fair & legal ? If not, what relief he is entitled to and from which date?"

2. Claim statement was filed by Shri Chawla pleading therin that he joined services of the bank on 29-8-81. In 1987 he was working at Zonal Office C-31, Connaught Place, New Delhi. In those days an extension counter of the bank

was opened at Surya Nagar, which was near to his house. He moved an application for transfer to the said extension counter. Ms. Anita Mehra, daughter of Shri P.K.Sareen, Assistant General Manager, posted at Patiala, was sent on deputation in the said extension counter. He raised an issue before the authorities through his union. His request was conceded to and he was transferred to the said extension counter, which facts annoyed Shri Sareen. As such branch manager became hostile to him, who started over burdening him with work. When he raised his grievances before the union, they were not cooperative in that matter. Branch manager made false nothings and recorded false entries in his performance record. As such his health started deteriorating and he suffered from blood pressure. In 1992 another branch manager took over and situation reached to normalcy. In 1993 a special increment was released by the Government in favour of the bank employees, on installation of computer. Said increment was not granted to him. In 1995 he made a request for his transfer to some other branch of the bank. His request was favourably considered by the bank, but it was not communicated to him by the branch manager. On 10th of March, 95, three false cases of alleged misbehaviour were made. against him. His representation was not considered by the bank. An Enquiry Officer was appointed, who shifted venue of enquiry from Delhi to Patiala, according to convenience of the bank. On 3rd of May, 97, the Enquiry Officer submitted his report. Disciplinary Authority served him with a show cause notice, which was replied by him on 21-1-98. On 23-3-98 a penalty of censure was imposed upon him. On 20-6-98 the Assistant General Manager wrote him that since he has failed to report for duty by 12-12-96, he is deemed to have been voluntarily retired from service on 24-6-96.

3. He pleads that when enquiry was pending adjudication, memorandum dated 12-11-96 was served upon him detailing therein that he was absent from duty without permission. Fresh set of charges, served upon him vide memo dated 12-11-96, were without sanction of law. Since a hostile atmosphere was created, he could not work in that atmosphere. Such an atmosphere was created with a view to sidetrack issue of illegal stoppage of his increment, due to him since 1991. At the instance of vested interests, the bank had acted beyond rules and in an arbitrary and unreasonable manner. Order dated 20-6-98 is totally whimsical, illegal, unjust, and void. He claims that this Tribunal may allow him to join his services with the bank, besides consequential relief in his favour.

4. Contest was given to the claim statement pleading that the workman was transferred to Surya Nagar Branch, on his request and not under pressure of the union. It has been disputed that bank authorities became hostile to him. It has been denied that he was over burdened with work by branch manager. When he projected a claim to be suffering from high blood pressure, he was asked to submit medical certificate of his illness from Chief Medical Officer. He never submitted such a certificate. It is not a matter of dispute that a special increment was released by the Government in favour of bank employees on installment of computers. That increment was not released in favour of the workman, since his services were poor, of no utility to the bank and he become a dead wood. It is not disputed that in March,1995, he made a request for his transfer to some other branch. It has been denied that his request for transfer was favourably considered by the bank and no communication was sent to him in that regard. It has been pleaded that he used to adopt a posture not to shoulder responsibilities entrusted to him. His behaviour towards his superiors was highly abnoxious. He abused and threatened the Branch Manager saying "thobra tor doonga". Bank was left with no alternative but to institute a departmental enquiry against him, for commission of misconducts. Charge sheet was served upon him and Shri T. S. Lakra was appointed as Enquiry Officer. It has been pleaded that venue of enquiry was shifted, after due notice to the workman. The Enquiry Officer completed the enquiry and submitted his report to the Disciplinary Authority. After service of the show cause, penalty of censure was awarded to him on 23-3-98. Memo dated 22-11-96 was served upon him, since he was absent in an unauthorized manner. He was called upon to join his duties within 30 days but he did not report for his duties. On 26-6-98 the Assistant General Manager passed an order, detailing therein that he is deemed to have voluntarily retired from service. He made a representation against that order and dispute was referred to the Board of Arbitration, which could not be settled. Since the claimant had not joined his duties despite service of notices, he is deemed to have voluntarily retired from service and not entitled to any relief.

5. On 24th of April,2002, workman tendered his affidavit as evidence. The matter was adjourned for his examination for 8th of July, 2002. Thereafter for one reason or the other, case was adjourned from time to time. Ultimately on 5-7-2006 evidence of the workman was recorded in part. At the request of the workman his cross examination was deferred for 12-6-2006. From 12-3-2007, the workman abandoned the proceedings. On 30th of April, 2007, a no dispute award was passed.

6. An application was filed by the claimant on 10-5-2007, for getting no dispute award set aside. After hearing the parties, the no dispute award was set aside, vide order dated 21-5-2009.

7. Workman had tendered his affidavit as evidence which is Ex. WW1/A. He was cross examined at length on behalf of the management. Shashi Bhushan Gupta, Branch Manager, tendered his affidavit EX. MW1/A as evidence on behalf of the management, besides various documents. He was cross examined at length on behalf of the workman. No other witness was examined by either of the parties.

8. Arguments were heard at the bar. Shri Aditya Singh, authorised respresentative, advanced arguments on behalf of the workman. Narinder Pal, authorized representative, raised his submissions on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :

9. Shri Chawla swears in his affidavit that in 1987, bank counter was opened at Surya Nagar, where he sought his transfer since that counter was in near vicinity to his house. Ms. Anita Mehram, daughter of Shri S. K. Sareen, Assistant General Manager of the bank, was sent on deputation to Surya Nagar branch. Since she was junior to him and there was no request from her side for her transfer, he requested bank authorities through his union to consider his request for transfer. On consideration of his request, he was transferred there, which fact annoyed the Assistant General Manager. As such Assistant General Manager, Delhi, S. K. Sareen, Assistant General Manager, Patiala, through Branch Manager adopted hostile attitude towards him. The Branch Manager made false nothings and entries in his performance record. He over burdened him with work and used to rebuke constantly. Due to such behaviour, his health deteriorated in 1991. In October, 93 a special increment was released by the Government in favour of all bank employees on installation of computer, which increment was not released in his favour. Shri Jasra got himself posted at Surya Nagar branch with a motive to create false cases against him. In 1995, he request for his transfer to any other branch. Though his request was considered favourably by the bank but that fact was not communicated to him. On 27th of February, 96, false and baseless charge sheet was served upon him. Shri T.S.Lakra conducted an enquiry, which was not fair and proper. On 20-6-98 Assistant General Manager wrote to him that since he had failed to report for his duty by 12-12-96 , hence he is deemed to have been voluntarily retired from service on 24-6-96. Memo dated 12-11-96 was not received by him. There is no procedure of deemed voluntary retirement, therefore, order dated 20-6-98 is bad in law.

10. He concedes, during the course of cross-examination, that he had not attended enquiry proceedings, instituted in pursuance of charge sheet Ex. WW1/2, served upon him on 27-2-96. He projects that atmosphere in the bank was not proper, hence he had not joined his duties for a long period. He asked the bank to resolve issue of his increment, which was stopped since 1991. He was not ready to join his duties on account of bad atmosphere created in the bank. There was non cooperation at all front for him. He admits that he purchased a shop in Amrit Plaza Market, Surya Nagar, Ghaziabad, in 1980. He unfold that his wife works in Indian Oil Corporation. Someone persuaded him to open a business of dry-cleaning in the said shop. Since he was having no knowledge of the business, hence it was closed. He projects that the business was run by him for about a year. He feianed ignorance whether memo Ex. MW1/23 was received and replied by him. He does not dispute receipt of order Ex.MW1/24.

11. Shri Shashi Bhushan, Branch Manager, swears in his affidavit Ex.MW1/A that on receipt of report of the Enquiry Officer, a show cause notice was sent to the workman calling upon him to explain as to why penalty of censure should not be imposed upon him. Though charges called for deterrent punishment, yet keeping in view all evidence the Disciplinary Authority intended to pass penalty of censure only. Reply dated 21-1-98 was sent by the workman and penalty of censure was awarded to him, vide order dated 28-3-98. Workman was in the habit of remaining absent from duties in unauthorized manner without prior sanction of leave. He was cautioned many a times, vide letters Ex.MW1/17 A-1 to Ex.MW1/17A-13. On 24-5-96 a letter was sent by Regional Manager to the workman, copy of which is Ex. MW1/18 . He sent a reply to that letter which is Ex.MW1/19, seeking medical leave upto 22-6-96. Vide letter dated 29-8-96, which is Ex.MW1/21, the workman was called upon to join his duties, since he was absent w.e.f. 24-6-96. Vide letter dated 1-11-96 which is Ex.MW1/22, he was called upon to join his duties within a period of three days. On 12-11-96 a notice was issued to the workman to join his duties within a period of 30 days, which notice is Ex.MW1/23. Since he failed to report for his duties, order dated 20-6-98 was issued detailing therein that he is deemed to have voluntarily retired from service, copy of which order is Ex.MW1/24. On receipt of that order he sent reply which is Ex.MW1/25. During the course of his cross-examination, he projects that charge sheet Ex.WW1/2 was served upon the workman. Inquiry conducted in pursuance of the said charge sheet resulted in award of penalty of censure to the workman. Order Ex.MW1/24 is not an outcome of the enquiry.

12. Out of facts projected by rival parties, it came to light that charge sheet Ex.WW1/2 resulted in initiation of an enquiry and Shri T. S. Lakra was appointed Enquiry Officer. Since the workman opted not to attend the said enquiry, the Enquiry Officer conducted it ex-parte and submitted his report to the Disciplinary Authority. The Disciplinary Authority served a show cause on the workman, calling upon him as to why a penalty of censure should not be awarded to him. On considering reply of the workman, penalty of censure was awarded to him. Therefore, issues, raised in respect of virus of that enquiry are not relevant at all for the present controversy. For adjudication of the dispute under reference, this Tribunal has to consider notice dated 12-11-96, which is Ex.MW1/23 and order Ex.MW1/24, wherein it has been detailed that the workman is deemed to have been voluntarily retired from service, since he failed to join his duties in pursuance of the notice referred above.

13. As detailed above, a case is projected by the bank that the claimant has abandoned his services, for he opted not to join his duties despite service of notice dated 12-11-96, which is Ex. MW1/22. Therefore, it would be expedient to know what words "abandon" and "abandonment" mean. Ordinarily, word "abandon" does not mean merely "leaving" but "leaving completely and finally". Word "abandonment" would indicate that it has a connotation of finality, which would mean relinquishment or extinguishment of a right, giving up of something absolutely, giving up with an intent of never claiming a right or interest, to renounce or forsake utterly. In order to constitute an "abandonment" there must be a total or complete giving up of duties, so as to indicate an intention not to resume the same. Abandonment must be total and under circumstances which clearly indicate an absolute relinquishment. A failure to perform duties pertaining to an office must be with an actual or imputed intention on the part of the officer to abandon and relinquish the office.

14. Abandonment is a voluntary positive Act. A man must expressly say that he gives up his right. If he remains quite, it cannot be said that he is forsaking his title to property or his interest therein. An office is abandoned by ceasing to perform its duties. A temporary absence is not, ordinarily sufficient to constitute an abandonment of an office. A mere absence of a workman from duty can not be treated as an abandonment of service. Abandonment or relinquishment of service is always a question of intention and normally, such an intention can not be attributed to an employee without adequate evidence is that behalf. However, the "intention" may be inferred from the acts and conduct of the party. The question as to whether the job, infact has been abandoned or not, is a question of fact which is to be determined in the light of the surrounding circumstances of each case.

15. In banking industry, clause, laying down the conditions where inference of abandonment of service can be drawn, was for the first time introduced by clause 2 of Bipartite Settlement dated 8-9-83. The said clause was replaced by clause 14 of 4th Bipartite Settlement dated 7-9-84, which was substituted by clause 17 of Vth Bipartite Settlement dated 10-4-89. Prior to Bipartite Settlement dated 8-9-83, cases of abandonment of service by employees were governed by doctrine of common law. Now such cases are governed in accordance with the agreed circumstances/ conditions in the Bipartite Settlements entered into between the bank and the union of the employees. Clause 17 of 5th Bipartite Settlement, which was governing the present controversy, is extracted thus :—

" 17. Voluntary Cession of Employment by the Employees.

The earlier provisions relating to the voluntary cessation of employment by the employee in the earlier settlements shall stand substituted by the following:

(a) When an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/ subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating interalia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or given an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.

(b) Where an employee goes abroad and absents himself for a period of 150 or more consecutive days without submitting any application for relief or for its extension or without any leave to his credit or without any leave to his credit or beyond period of leave sanctioned originally/subsequently or when there is a satisfactory evidence that he has taken up employment outside India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of notice, stating interalia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days

from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.

(c) If an employee again absents himself within a period of 30 days without submitting any application after reporting for duty in response to the notice given after 90 days or 150 days absence, as the case may be, the second notice shall be given after 30 days of such absence giving him 30 days time to report. If he reports in response to the second notice, but absents himself a third time from duty within a period of 30 days without application, his name shall be struck off from the establishment after 30 days of such absence under intimation to him by registered post deeming that he has voluntarily vacated his appointment".

16. Clause 17 of the 5th Bipartite Settlement dated 10-4-89 was deleted by clause 33 of the 7th Bipartite Settlement dated 27th of March, 2000. Clause 33 of 8th Bipartite Settlement dated 2nd of June, 2005, again reintroduces provisions relating to voluntary cessation of employment. Therefore, from 27th of March, 2000 till 2-6-2005 provisions relating to voluntary cessation of employment were not in force in the banking industry. Since the order impugned was passed on 20-6-98 hence provisions of 5th Bipartite Settlement dated 10-4-89 would govern the controversy. A contention was raised on behalf of the claimant that clause 17 of 5th Bipartite Settlement dated 10-4-89 was deleted, w.e.f. 1st of November, 1997.

17. 5th Bipartite settlement was arrived at on 10th of April, 1989. In pursuance of clause 8(d) and 25 of the 5th Bipartite Settlement, agreement dated 9-6-1989 was arrived at on certain matters wherein issue relating to voluntary cessation of employment was not discussed. Settlement dated 29-6-1990 was arrived at, wherein some improvements under certain heads of 5th Bipartite Settlement were discussed and resolved. In the said settlement issue relating to voluntary cessation of employment was also not discussed. Settlement dated 16-7-1991 was reached in respect of residual issues. Settlement dated 29-10-1993 was arrived at for introduction of pension scheme as second retirement benefit in lieu of contributory provident fund for award staff. Another settlement of the said date on computerization and mechanization of the bank was arrived at between the parties. 6th Bipartite settlement was arrived at on 14-2-95 wherein it was provided that 5th Bipartite Settlement dated 10-4-1989, besides other settlements shall continue to govern service conditions except to the extent it were modified by the said settlement. In 6th Bipartite settlement clause 17 of 5th Bipartite Settlement was neither discussed nor modified. Settlement dated 14-12-96 was arrived at on certain issues relating to special pay and conveyance allowance. Settlement dated 28th of November, 1997, was also arrived at and it was decided that part time employees shall be paid consolidated wages. Issues relating to leave fair concession, project area compensatory allowance, split duty allowance, compensation on transfer, sick leave, pardip port town allowance etc. were resolved. On 27th of March, 2000, 7th Bipartite Settlement was arrived at between the parties. Clause 33 of 7th Bipartite deleted clause 17 of 5th Bipartite Settlement dated 10th of April, 89. Certain dates were provided for implementation of various provisions of the said settlement in clause 35. Clause 37 of the said settlement speaks that the settlement shall be binding on the parties for five years from 1st of November, 97, which means that certain beneficiary provisions were given retrospective effect. Relying that proposition the workman claims that clause 17 of Vth Bipartite Settlement stands deleted w.e.f. 1st of November, 1997.

18. Bipartite Settlements are arrived at in pursuance of the provisions of sub-section (1) of Section 18 of the Industrial Disputes Act, 1947 (in short the Act) read with rule 58 of Industrial Disputes (Central) Rules 1957 (herein after referred to as the Rules). Sub clause (1) of clause 27 of 5th Bipartite Settlement contemplates that the said settlement, unless provided otherwise, shall come into force with retrospective effect from 1st of November, 1987, and shall be binding on the parties for five years from 1st of November, 1987. Six months before the settlement expires, the union may submit their charter of demands to the Indian Banks Association. The negotiations are to commence before the last three months of the expiry of the settlement. Sub-clause (ii) of the said clause provides that terms and conditions hereof shall continue to govern and abide by the parties even thereafter until the settlement is terminated by either party giving to the other party a statutory notice as prescribed in law for the time being in force.

19. Sub-clause (1) of clause 37 of 7th Bipartite Settlement makes provision that the settlement shall be binding on the parties for five years from 1st of November, 1997. Six months before the settlement expires, the union may submit their charter of demands to the Indian Banks Association. The negotiation will commence before the last three months of the expiry of the settlement. Sub-clause (1) of the said clause contemplates that the terms and conditions hereof shall continue to govern and bind the parties even thereafter until the settlement is terminated by either party giving to the other a statutory notice as prescribed in law for the time being in force. Out of the aforesaid clauses of 5th Bipartite settlement as well as 7th Bipartite settlement, it came to light that the parties had agreed to give retrospective effect to certain provisions contained in those settlements. However, it has been specified that terms and conditions of the settlements shall continue to govern and bind the parties even thereafter until the settlement is terminated by either party by giving to the other party a statutory notice as prescribed in law for the time being in force.

20. A question would arise as to when 5th Bipartite Settlement lost its savour. Policy contained in section 18 of the Act makes a settlement binding on the parties and for that purpose it should be arrived at by an agreement between the employer and the workman. Sub-section (1) of section 18 of the Act was introduced by Amending Act of 1956 with a view to remedy difficulty, which was existing in law. There was no provision to make a private settlement binding on the parties thereto. By the said Amending Act, definition of "settlement" was amended so as to include written agreements between the employer and the workman arrived at otherwise than "in the course of conciliation proceedings" where such agreement has been signed by the parties thereto in the prescribed manner and a copy thereof has been sent each to the appropriate Government and Conciliation Officer. Sub-section (1) of section 18 of the Act provides that a settlement arrived at by an agreement between the employer and the workman "otherwise than in the course of conciliation proceedings" shall be binding only "on the parties to the agreement". Normally it is the union or representative of the employee who enter into agreement with the employer. The settlement so signed by such representatives binds all those whom they represent. Therefore, the terms of settlement become a part of the contract of employment of each individual workman represented by such representatives.

21. Rule 58 of the Rules provides that a settlement arrived at in the course of conciliation proceedings or otherwise shall be in the prescribed form and be signed by the persons, detailed therein on behalf of employer and the union respectively. The said rule does not deal with the manner in which a settlement shall be entered into or arrived at between the parties. A settlement becomes binding at once as soon as the memorandum of settlement has been signed by the parties in the prescribed manner and a copy of it is sent to the Government and the Conciliation Officer and it comes into operation on the date it is signed or on the date which is mentioned in it for its coming into operation. Law to this effect was laid by the Apex Court in Sirsilk Ltd. (1963 II.L.L.J. 647).

22. 5th Bipartite Settlement was arrived at between the parties otherwise than in the course of conciliation proceedings. It is binding on the parties as provided by sub-section (1) of section 18 of the Act. It shall be binding for such period as is agreed upon by the parties and if no such period is agreed upon for a period of six months from the day on which the memorandum of settlement is signed by the parties and shall continues to be binding, after the expiry of the period aforesaid until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party to the settlement, enacts sub-section (2) of Section 19 of the Act. There are three stages with different legal effects on the life of a settlement. There is a specific period contractually or statutorily fixed as the period of operation. After expiry of statutorily fixed period, settlement does not cease to be effective. But it continues to be binding on parties until notice has been given by one of the parties of its intention to terminate it and two months have not elapsed from the date of such notice. This is the second stage. The last stage is arrived at when period of notice, under sub-section (2) of Section 19 of the Act, expires. After this the settlement ceases to be binding under the Act. However, termination of the settlement will not have effect of extinguishing the rights following therefrom. The right and obligation which flow from a settlement are not wiped out.

23. No case has been projected by the claimant that a notice was served on Indian Bank Association under sub-section (2) of Section 19 of the Act to terminate 5th Bipartite Settlement within two months from 31st of October, 1992, the date up to which the said Bipartite Settlement was in operation. Undoubtedly it was agreed upon between the parties that the 5th Bipartite settlement shall be binding upon the parties from 1st of November, 1987 till 31st of October, 92 but it was mentioned therein in sub-clause (2) of clause 27 that terms and conditions of the said Bipartite Settlement shall continue to govern and bind the parties even thereafter until settlement is terminated by either party giving to other a statutory notice as prescribed by law for the time being in force. When statutory notice was not given, the terms and conditions of 5th Bipartite Settlement continued to govern the parties till 7th Bipartite Settlement was entered into on 27-3-2000.

24. Can it be said that by giving retrospective operation to the provisions of 7th Bipartite Settlement from 1st of November, 1997, provisions of clause 17 of the 5th Bipartite Settlement were deleted w.e.f. the date referred above? 7th Bipartite Settlement expressly states that it would have retrospective effect from 1st of November, 97. By giving retrospective effect to the said Bipartite Settlement, parites tried to restore existence of the said Bipartite Settlement on 1st of November, 97. Here the object of the parties was not to obliterate substantive rule of voluntary cessation of employment from 1st of November, 1997, but to grant some benefits to employees from retrospective dates. The settlement simply enables the award staff to obtain benefits relating to scale of pay, stagnation increments, dearness allowance, split compensatory allowance, house rent allowance, transport allowance, special pay, hill and fuel allowance, fixed personal pay overtime allowance, provident fund, benefits towards pension, medical aid, hospitalization and reimbursement of expenses of road travel, consolidated wages to part-time employees, washing allowance, cycle allowance, haulting allowance, split duty allowance, privilege leave, maternity leave, sick leaves compensation on transfer, pardip port town allowance, and provisions relating to compensation and mechanization from retrospective date. It was not given retrospective effect in

the matter of the deletion of clause relating to voluntary cessation of employment, since it would affect the past acts of the bank in such matters. Clause relating to voluntary cessation of employment creates a substantive right in favour of the bank and a punishment/penalty to an employee who fails to join his duties, or has no intention to join his duties even after service of notice calling upon him to report for duty within 30 days of the date of service of such a notice. Therefore, obligation was created on the employees and a right on the bank to dispense with the service of such an employee, who has no intention to join his duties despite service of a notice on him, when he over stayed his leaves or absents himself unauthorisedly. Therefore, validity of clause 17 of 5th Bipartite Settlement is not affected by clause 33 of 7th Bipartite Settlement, which makes settlement operative from retrospective date.

25. Clause 33 of 7th Bipartite Settlement tries to ungraft substituted provisions on clause 17 of 5th Bipartite settlement, which can not be done from retrospective effect. It has no where been provided in 7th Bipartite Settlement that action taken by the bank in pursuance of clause 17 of 5th Bipartite Settlement shall be deemed to be invalid from 1st of November, 1997 till 27th of March, 2000, the date on which 7th Bipartite Settlement was signed. In case retrospective operation of clause 33 of 7th Bipartite Settlement was intended to by the parties then it would have been provided that all actions taken in between 1st of November, 97 till 27th of March, 2000, in pursuance of clause 17 of the 5th Bipartite Settlement, would be deemed to have been invalid. No such provisions was made, which makes it clear that the provisions of clause 17 of 5th Bipartite Settlement were in existence till 27-3-2000. Therefore contention of the workman that clause 17 of 5th Bipartite Settlement was deleted w.e.f. 1-11-97 is found to be unsustainable and the same is brushed aside.

26. Now I would turn to the facts of the controversy. Letter Ex.MW1/21 was written by the bank to the workman. This letter was written to him on 29-8-96 detailing therein that he was absent from his duty since 24-6-96, without submitting any application/intimation in that regard. Several letters were written to him in the past, which were not responded. He was advised to report for his duties and explain as to why he was absent unauthorisedly from his duties. This letter evoked no response. Another letter was sent to him on 1-11-96 which is Ex.MW1/22, on the strength of which he was informed that he was absent from his duties unauthorisedly since 24-6-96 and was called upon to report for duty within 3 days from the receipt of that letter. Letter Ex.MW1/23 was written to him on 12-11-96, wherein it was stressed that he was absent from duty since 24-6-96, which situation was highly irregular and in contravention of the rules governing conditions of his service in the bank. He was advised to report for duty within 30 days of the date of that notice. In the event of his failure to report for duty, he was cautioned that he shall be deemed to have voluntarily retired from service. Shri Chawla opted not to join his duties despite service of that notice. He projects in his cross-examination that he does not recollect whether Ex.MW1/23 was replied by him. He feigned ignorance whether it was received by him or not. However, he had not projected a claim that Ex.MW1/23 was not received by him. In his testimony he admits that he purchased a shop in Amrit Plaza Market, Surya Nagar, Ghaziabad. He admits that on pursuance of someone, he started drycleaning business in the said shop, which business was run by him for a period of one year. He unfolds that since he was not having any knowledge of that business, hence it was closed. However he opted not to disclose the period for which the business was run by him at the aforesaid shop. Therefore, it is evident that the workman took up avocation/ business and opted not to join his duties, despite service of notice Ex.MW1/23.

27. Sub-clause (a) of clause 17 of 5th Bipartite Settlement provides that where an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond period of leave sanctioned originally/subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating inter alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence where available. Unless employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation or that he has no intention for not joining the duties, the employee may be deemed to have been voluntarily retired from the bank service on the expiry of the said notice. In the event of the employee submitting satisfactory reply he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice, without prejudice to the bank's right to take any action under the law or rules of service.

28. Here in the case Shri Chawla was absent from his duties for a period more than 90 days. He started his drycleaning business at a shop, which fact makes it clear that Shri Chawla had no intention to join his duties. Undoubtedly it was not mentioned in notice Ex.MW1/23 that Shri Chawla has taken up a business and was having no intention to join his duties but admitted fact in that regard makes it clear that no prejudice was caused to Shri Chawla when it was not mentioned in the notice that he has taken up a drycleaning business and was having no

intention to join his duties. Therefore, notice Ex.MW1/23 is in compliance to the provisions of sub-clause (a) of clause 17 of 5th Bipartite Settlement.

29. Whether the management was enjoined with a duty to initiate enquiry against Shri Chawla in the matter of his unauthorized absence, before invoking provisions of clause 17 of 5th Bipartite Settlement? In Suresh Chand (2007 LLR 344) contention of the workman that no domestic enquiry was conducted and termination of his services was illegal, was brushed aside and it was ruled that when a workman absents from duty without any intimation or prior permission, termination of his services without holding an enquiry will be justified. In Vijay Pal (2007 L.L.R.7) and G. T. Lal (1979 Lab.I.C. 2910) same proposition of law were laid in G.T. Lal (supra) it was ruled by the Apex Court that absence of an employee because of strike for enforcement of their demands does not amount to abandonment of their services. In Syndicate Bank (AIR 2000 S.C. 2198) the Apex Court was confronted with such a proposition, as exists in the present controversy. Workman was absent from his work place for a period of 90 days or more consecutive days. A notice was served upon him to report for duty within 30 days of notice alongwith the grounds on which bank came to the conclusion that the workman had no intention to join his duties. The workman did not respond to that notice at all. Bank passed orders to the effect that the workman had voluntarily retired from the service of the bank. Apex court laid that as far as principles of natural justice are concerned the court was to consider (1) whether show cause note detailing the note of the complaint or acquisition was served, (2) whether an opportunity was there for the workman to state his case and (3) whether the management acted in good faith and has been fair, reasonable and just. It was ruled therein that on the facts and circumstances of the case the principles of natural justice were inbuilt in the clause relating to voluntary cessation of employment and when workman had not opted to join his duties on service of notice, principles of natural justice were complied with. The law laid by the Apex Court in the precedent referred above is applicable to the case of Shri Chawla.

30. Ex. MW1/24 pronounces that Shri Chawla is deemed to have voluntarily retired from service on 24-6-96. Whether the management is justified in passing such an order? As projected above an enquiry was being conducted against Shri Chawla for misconduct committed by him on 22-2-1995 and 10th of March, 1995. T.S. Lakra submitted his enquiry findings before the Disciplinary Authority on 3-5-97. Disciplinary Authority served a show cause notice on the workman on 6-1-98 calling upon him as to why a penalty of cessation of service should not be imposed upon him. After consideration of his submissions penalty of cessation was imposed upon him by Disciplinary Authority on 18-3-98. Thereafter notice Ex. MW1/24 was served upon the claimant on 20-6-98 making him known that he is deemed to have voluntarily retired from service on 24-6-96. Therefore, order Ex. MW1/24 contains an inherent infirmity. How Shri Chawla can remain in service on 19-3-98, the date when penalty of cessation was served upon him, in case he was deemed to have been voluntarily retired on 24-6-96? However, it is a case of complete absence of an intention on the part of Shri Chawla to join his duties, which fact has emgered over the record. When Ex. MW1/24 was served on Shri Chawla, he sent a reply to it which is Ex. MW1/25. In Ex. MW1/25 Shri Chawla does not dispute his absence from duty. However, he asserts that his absence from duty is on account of his harassment by the officials of the bank. He details in that letter that he would be ready to join his duties in case bank decides his case at the earliest. Therefore, in Ex. MW1/25, written by Shri Chawla on 9-7-98, he had not shown his intention to join his duties despite the order wherein he was declared to be deemed to have voluntarily retired from his service w.e.f. 20-6-96. Considering all these facts, infirmity in the order needs correction. Hence it is ordered that Shri Chawla is deemed to have voluntarily retired from service w.e.f. 20-6-98 and not from 20-6-96. Except this modification in the date of deeming retirement, the order dated 20-6-98 is found to be just fair and legal.

31. In view of the reasons referred above Shri Chawla is deemed to have voluntarily retired from the service of the bank from 20-6-98. He will get his benefit for being in service till 20-6-98. An award is accordingly passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

DATED: 6-8-2010

नई दिल्ली, 27 सितम्बर, 2010

का. आ. 2598.—केन्द्रीय सरकार, भारतीय रेल अधिनियम, 1890 (1890 का 9) के अंतर्गत रेल सेवक (रोजगार के घंटे) नियम, 1961 के नियम 4(2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री रवि माथुर, अपर सचिव, श्रम एवं रोजगार मंत्रालय को उक्त नियमों के अंतर्गत अपील सुनने के लिए अपीलीय प्राधिकारी के रूप में अधिसूचित करती है । यह सरकारी राजपत्र में इसके प्रकाशन की तिथि से लागू होगा ।

[फा. सं. जेड-20025/6/2006-सीएलएस-I]
देवेंदर सिंह, निदेशक

New Delhi, the 27th September, 2010.

S.O. 2598.—In exercise of the powers conferred by Rule 4 (2) of Railway Servants (Hours of work and period of rest) Rules, 2005 under Section 136 of the Indian Railway Act, 1989 (24 of 1989) the Central Government hereby notifies Shri Ravi Mathur, Additional Secretary in the Ministry of Labour & Employment as Appellate Authority to hear Appeals under the said Rules. This will take effect from the date of its publication in the Official Gazette.

[F. No. Z-20025/06/2006-CLS-I]
DEVENDER SINGH, Director

Printed by the Manager, Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.